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1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF GEORGIA
3 ATLANTA DIVISION

4 DONNA CURLING, ET AL., :
5 PLAINTIFFS, :
6 VS. :
7 BRAD RAFFENSPERGER, ET AL., :
8 DEFENDANTS. :
9

10 TRANSCRIPT OF BENCH TRIAL - VOLUME 5A PROCEEDINGS

11 BEFORE THE HONORABLE AMY TOTENBERG
12 UNITED STATES DISTRICT SENIOR JUDGE

13 JANUARY 16, 2024

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21 MECHANICAL STENOGRAPHY OF PROCEEDINGS AND COMPUTER-AIDED

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(. . . CONT'D . . .)

1 (...CONT'D....)

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I N D E X T O P R O C E E D I N G S**THE PLAINTIFFS' CASE (Continued)**

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PROCEEDINGS

(Atlanta, Fulton County, Georgia; January 16, 2024.)

3 THE COURT: All right. We are going to continue
4 Mr. Germany's testimony at this time?

THE PLAINTIFFS' CASE (Continued) .

6 MR. CROSS: Your Honor, we were going to start
7 briefly with Ms. Curling and then go back to Mr. Germany.

8 THE COURT: Okay. I mean, is that all right with
9 defense counsel?

10 MR. RUSSO: That's fine, Your Honor. Thank you.

11 THE COURT: Okay.

12 (There was a brief pause in the proceedings.)

(Witness sworn)

16 COURTROOM DEPUTY CLERK: Please have a seat. If you
17 would, state your name and spell your name completely for the
18 record, please.

19 THE WITNESS: Okay. Donna Curling, D-O-N-N-A,
20 C-U-R-L-I-N-G.

21 Whereupon,

DONNA CURLING,

23 after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

25 BY MS. KAISER:

1 **Q.** Good morning, Ms. Curling.

2 Can you please introduce yourself to the Court?

3 **A.** I'm sorry?

4 **Q.** Can you please introduce yourself for the Court?

5 **A.** Yes. Good morning. Donna Curling.

6 **Q.** Where are you from?

7 **A.** I am from Georgia.

8 **Q.** Have you lived in Georgia your whole life?

9 **A.** I moved to Charlotte, North Carolina, as a child and to
10 California as a young adult. I came back to Georgia in 1987
11 and have lived in Roswell, Georgia, ever since.

12 **Q.** Did you go to college, Ms. Curling?

13 **A.** I went to UNC Charlotte.

14 **Q.** What did you study there?

15 **A.** Psychology.

16 **Q.** Are you currently employed?

17 **A.** I am not employed. I just have volunteer work.

18 **Q.** What kind of volunteer work do you do?

19 **A.** I have worked with election protection organizations since
20 about 2005. Most notably would be Vote Trust USA. And I
21 partnered with Donna Price forming Georgians for Verified
22 Voting.

23 **Q.** Are you a registered voter here in Georgia, Ms. Curling?

24 **A.** I am.

25 **Q.** When did you register to vote?

1 **A.** I registered in 1988.

2 **Q.** And to the best of your knowledge, have you voted in every
3 election since 1988?

4 **A.** I have voted in all presidential and midterms and most
5 special elections in municipals. I think I probably missed
6 some municipal elections along the way.

7 **Q.** Do you believe that it is important to vote?

8 **A.** I believe it is very important.

9 **Q.** Why do you believe that voting is very important?

10 **A.** Well, I think voting is a right and a privilege and a duty
11 that was granted us by our Constitution, granted U.S. citizens,
12 and it is our means of choosing our representative government.

13 **Q.** Do you intend to vote in future elections in Georgia?

14 **A.** I do.

15 **Q.** Is it your wish to vote in person in future elections?

16 **A.** I would like that. I used to enjoy voting in person. It
17 is kind of you get a sense of community and everybody is at
18 your precinct exercising their right and their duty to vote.

19 **Q.** As a voter in Georgia, Ms. Curling, do you feel that you
20 can cast your vote with confidence that it will be counted as
21 cast?

22 **A.** I do not.

23 **Q.** And why not?

24 **A.** Because Georgia's voting system is just not sufficiently
25 secure.

1 **Q.** What has led you to believe that Georgia's voting system
2 is not sufficiently secure?

3 **A.** Well, for one, all my years of working on election
4 protection, I have talked with experts and activists and
5 learned a lot about the DRE system first and now the BMD
6 system.

7 And -- but the things that we have uncovered in this case
8 and the knowledge I have acquired over the years, I just do not
9 feel like Georgia has a secure enough system for my -- to count
10 my vote as cast.

11 **Q.** You mentioned the BMD system.

12 Are you familiar with Georgia's current BMD voting system?

13 **A.** I am.

14 **Q.** Have you ever voted on a BMD?

15 **A.** I have.

16 **Q.** How was your experience voting on a BMD?

17 **A.** Well, my experience both times that I voted on a BMD was
18 only one race, so I don't feel like I've had the full treatment
19 of voting on a BMD.

20 What I was acutely aware of is the screens are very large,
21 the rooms are small, there are people milling around
22 everywhere, and you feel very exposed. And with no effort at
23 all, somebody could see how I am voting, and I am not really
24 comfortable with that.

25 **Q.** Have you voted absentee in Georgia, Ms. Curling?

1 **A.** Yes, I have.

2 **Q.** Generally speaking, how does absentee voting work in
3 Georgia?

4 **A.** Well, they changed the law in the last three years.
5 Three years ago, if you checked the box saying you were 65
6 years old or older, all of your ballots would be sent to you
7 without a request. But they have changed that, and now you
8 have to pay attention to the calendar, make sure you request
9 your ballot in plenty of time for it to be processed and sent
10 to you. And then, likewise, you have to figure out the best
11 way to return that ballot to make sure it is most likely to be
12 counted.

13 **Q** How has your experience been voting absentee in Georgia?

14 **A.** Not good.

15 **Q.** Why is that?

16 **A.** Well, sitting in this very courtroom, I learned that I had
17 been disenfranchised one of the first times I voted absentee.

18 If I were not involved in this case, I don't think I would
19 have ever known.

20 But my vote did not count at that time.

21 **Q.** And I was -- can you just explain what you mean by you
22 were disenfranchised?

23 **A.** Disenfranchised just means that my vote did not count.
24 Even though I had done everything by the book, followed the
25 instructions, for whatever reason, my vote did not count.

1 **Q.** Is that the only instance in which you thought you had
2 voted but found out that your ballot was not counted?

3 **A.** Unfortunately, no. I was in my attorney's office one day
4 looking through the eNet report and found that I was
5 disenfranchised again in 2020.

6 **Q.** How does it make you feel, Ms. Curling, to know that on at
7 least two occasions your ballots were not counted?

8 **A.** It is very upsetting. My right to vote is very important
9 and personal to me, and knowing that I was using the system
10 that was recommended if you do not want to vote on the
11 machines, and still the system failed me.

12 **Q.** And, Ms. Curling, I just wanted to clarify.

13 When you say you found out that your vote did not count,
14 do you mean that there was no record of your absentee ballot
15 that you cast?

16 **A.** I don't actually know if there was -- I mean, I think on
17 My Voter page it showed that it had been returned, so I'm not
18 real clear about how those things are recorded.

19 But I did see -- well, I am assuming the attorneys who
20 said Ms. Curling hadn't bothered to vote in the last election
21 had some information to go on.

22 **Q.** So your understanding was that you cast a ballot, an
23 absentee ballot, but that the record showed it had not been
24 processed properly; is that correct?

25 **A.** That's correct.

1 **Q.** Okay. Based on your experience, Ms. Curling, do you plan
2 to continue voting absentee in Georgia in future elections?

3 **A.** Well, that is a very difficult question. Most likely if
4 we continue to use the BMD system in Georgia, I will more than
5 likely opt to vote absentee and take my chances there because
6 at least then there is a permanent ballot of record for my
7 vote.

8 **Q.** When you say permanent ballot of record for your vote,
9 could you explain what you mean by that.

10 **A.** I really mean to say verified that I know it is my
11 selections on that ballot.

12 **Q.** And are you able to verify your selections on a
13 BMD-generated ballot, Ms. Curling?

14 **A.** You are not. Because when you vote on a BMD, after you
15 cast your vote, you can read the human readable portion to make
16 sure that your selection is correct. But after you print, that
17 screen goes blank and the vote is translated into a QR code,
18 which no human can read. It is a machine language. So you
19 have no idea whether that QR code reflects your selection or
20 not.

21 **Q.** And is it important to you, Ms. Curling, to have a
22 verified ballot of record?

23 **A.** It is very important, yes.

24 **Q.** Okay. Thank you, Ms. Curling. I don't have any further
25 questions --

A. Thank you.

2 Q. -- at this time.

CROSS-EXAMINATION

4 BY MR. BELINFANTE:

5 Q. Good morning, Ms. Curling.

A. Good morning.

7 Q. I'm Josh Belinfante. We met via Zoom from your
8 deposition --

9 **A.** Yes, we did.

10 Q. -- if you recall. Good to see you here today.

11 A. Thank you.

12 Q. Just a few questions for you today.

13 You testified a moment ago that you lack confidence in the
14 BMD system, but do you agree that no election is flawless?

15 **A.** I absolutely agree.

16 Q. Okay. And you would also agree with me that there are
17 real risks in any way that you vote?

18 **A.** I agree.

19 Q. And you would further agree with me that when you vote
20 absentee, that absentee ballot is run through a scanner to
21 count the votes?

22 **A.** Yes, sir.

23 Q. And you have no way of knowing if the scanner actually
24 counted your ballot as cast; isn't that right?

25 A. That's correct.

1 **Q.** And you have no personal knowledge that any vote cast
2 using a BMD was not counted as cast; is that right?

3 **A.** I have no knowledge of that.

4 **Q.** You testified a moment ago that you learned through
5 counsel and through this litigation that in, I believe it was,
6 2020 you cast an absentee ballot that was not counted?

7 **A.** Yes.

8 **Q.** Do you recall which election in 2020 that was?

9 **A.** I think it was the primary.

10 **Q.** The general primary?

11 **A.** The general primary, yes.

12 **Q.** Do you have any understanding as to who administers the
13 absentee process, whether it is the state or county
14 governments?

15 **A.** I believe it is the county.

16 **Q.** Ms. Curling, that's all the questions I have for you.

17 Thank you.

18 **A.** Thank you.

19 THE COURT: May this witness be excused?

20 MR. CROSS: Yes, Your Honor.

21 MS. KAISER: Yes, Your Honor.

22 THE COURT: Thank you very much.

23 THE WITNESS: Thank you.

24 THE COURT: Did you-all have an opportunity to confer
25 with -- with Mr. Davis' counsel?

1 MR. BROWN: Yes, Your Honor. Mr. Davis' counsel sent
2 us an email outlining the topics that were going to be covered.

3 THE COURT: And you-all were able to resolve any --
4 if there were any differences, resolve any?

5 MR. BROWN: We will see how it --

6 THE COURT: You will see how it goes. All right.

7 MR. BROWN: -- Your Honor, and we will take in mind
8 your comments from last Friday concerning the difficulty of
9 managing the scope of the cross and do the best we can.

10 THE COURT: All right. Remember that you are still
11 under oath, sir. Thank you very much.

12 THE WITNESS: Thank you.

13 Whereupon,

14 RYAN GERMANY,

15 after having been previously duly sworn, testified as
16 follows:

17 | CROSS-EXAMINATION

18 BY MR. OLES:

19 Q. Good morning, Mr. Germany. My name is David Oles. I
20 represent Ricardo Davis, plaintiff in this case.

21 | A. Good morning.

22 Q. I have a few questions for you concerning the testimony
23 that you gave last week.

24 Are you familiar with the two-page investigative report
25 that you prepared for the Secretary of State's office dated

1 October 3rd -- 30th, 2017, concerning the alleged deletion of
2 data from the CES server at KSU?

3 **A.** I recall that generally, yes.

4 MR. OLES: May I approach, Your Honor?

5 THE COURT: Yes.

6 BY MR. OLES:

7 **Q.** Mr. Germany, I gave you a two- or three-page document
8 there.

9 Do you recognize that document?

10 **A.** Yes.

11 **Q.** And what is it?

12 **A.** This looks like an investigation report of an
13 investigation that I did regarding -- it says I was asked to
14 look into allegations that data was deleted from servers housed
15 at the KSU Center for Election Systems.

16 **Q.** Okay. Thank you, sir.

17 MR. OLES: Judge, I move to admit this investigative
18 report into the evidence -- the record in the case. This has
19 not previously been disclosed as a -- an exhibit, to my
20 knowledge. But since it does involve the testimony that
21 Mr. Germany gave last week, I would like to ask him a few
22 questions about it.

23 COURTROOM DEPUTY CLERK: What is the exhibit number?

24 MR. OLES: I didn't know how I should number it, so
25 Davis 1.

1 THE COURT: Well, I think for purposes of the
2 record --

3 MR. BEDARD: For numbering purposes, that's fine,
4 Your Honor. I think we would lodge a relevance objection at
5 this point just because I fail to see how this ties in with the
6 BMDs which are the remaining issues in the case. We're
7 obviously not dealing with DREs anymore.

8 So subject to that, I was going to let Mr. Oles go
9 for a little bit to see if he was going to tie it somehow, but
10 that is my objection to this.

11 THE COURT: All right. Let's see if he ties it at
12 all. And at least for the record, I'm going to -- we're going
13 to -- I'm not admitting it yet. I'm going to see how it is
14 tied in. All right? But I'm looking at it now.

15 MR. OLES: Thank you, Judge.

16 BY MR. OLES:

17 Q. Mr. Germany, can you tell me, for your report, who was the
18 complainant for your investigative report?

19 A. I don't know that there was one.

20 Q. Okay. Isn't it true, sir, that most investigative
21 reports, there is a complainant -- in investigative reports
22 prepared in the Secretary of State's office, there is a
23 complainant?

24 A. Not investigations that I would do. Those were more --
25 that was a different -- with -- what you said is true for

1 investigations done by our Investigations Division.

2 **Q.** Okay. Can you tell me who the respondent was for this
3 report?

4 **A.** Again, that doesn't really apply in investigations I would
5 do.

6 **Q.** Isn't it also true that for most Secretary of State
7 investigative reports there are respondents who are responsible
8 for the incident being investigated?

9 **A.** In investigations that our Investigations Division would
10 do -- that is the law enforcement kind of wing of the agency --
11 I think that would be true.

12 Again, the investigations I would do in my role as general
13 counsel weren't -- weren't under that -- that division of the
14 office.

15 **Q.** Now, in your report, there is no -- isn't it true there is
16 no listing of any documents or other evidence that you reviewed
17 in preparing your investigative report?

18 **A.** I'll have to read it.

19 **Q.** Please.

20 **A.** (The witness complies.)

21 The report says that I have reviewed applicable documents
22 and spoken to various involved parties.

23 **Q.** Okay. But not a single specific document is listed in
24 here; correct, sir?

25 **A.** The report references a KSU IT after-action report.

1 **Q.** Other than that single report, have you -- did you, in
2 fact, review any other documents in preparing your -- in
3 conducting your investigation?

4 **A.** I don't recall at this point.

5 **Q.** Isn't it true, Mr. Germany, that for Secretary of State's
6 investigations, the reports typically include a listing of the
7 documents that were reviewed by the investigator?

8 **A.** So again, what you are referring to are investigations
9 undertaken by the Investigations Division in their law
10 enforcement capacity. This is an investigation done in my
11 capacity as general counsel. It is generally more for
12 internal, not law enforcement-type issues.

13 So I think what you are saying is true in regards to
14 investigations done by our Investigations Division.

15 **Q.** Can you tell me what staff members of KSU you communicated
16 with in conducting your investigation?

17 **A.** I don't recall at this point.

18 **Q.** Can you tell me what other individuals you may have
19 communicated with in preparing this report?

20 **A.** It does say I had discussed the KSU after-action report
21 with SOS IT.

22 **Q.** And who would SOS IT be?

23 **A.** SOS IT is a division within the Secretary of State's
24 office.

25 **Q.** I understand.

1 But do you recall a person?

2 **A.** I don't recall specifically who I spoke to at this point.

3 **Q.** Can you tell us what elections were impacted by the CES
4 server data that was deleted?

5 **A.** I don't think any elections were impacted.

6 **Q.** You don't think? You don't know for sure?

7 **A.** I don't think I can say that, sitting here right now. To
8 the best of my recollection and in this report that I just
9 reviewed, it suggested that, that same thing, that no
10 elections -- that the data on the server wasn't a crucial
11 election functionality and it wouldn't affect any elections.

12 **Q.** But as you sit here today, can you categorically state
13 that this did not affect the results of the 2016 election?

14 **A.** Yes.

15 **Q.** Now, you reach a conclusion at the end of your report that
16 the data contained -- well, let me -- can you turn to Page 2,
17 please?

18 You reach a conclusion in your report that the data
19 contained on the servers as being held by the FBI and will be
20 available for use in ongoing litigation.

21 Do you see that, sir?

22 **A.** Yes.

23 **Q.** Isn't it true that that data was never provided for use in
24 ongoing litigation?

25 **A.** I don't think that is true.

1 **Q.** What specific evidence do you have that it was provided?

2 MR. BEDARD: And I'll just object on relevance
3 grounds, Your Honor. Again, I think we've given Mr. Oles some
4 space here to tie it together. And now we're talking about,
5 again, discovery issues related to claims that aren't in the
6 case anymore.

7 THE COURT: Well, I'm going to let him ask the
8 question and obtain an answer to the extent that it can be
9 provided.

10 Do you want to repeat the question?

11 MR. OLES: Yes, Judge.

12 Can -- Madam Reporter, can you read that back for me?

13 **(The record was read back by the court
14 reporter.)**

15 THE WITNESS: So my recollection is that SOS, we were
16 able to obtain a copy of it from the FBI, and that was provided
17 to our attorneys in this litigation.

18 Again, this is to the best of my recollection.

19 BY MR. OLES:

20 **Q.** Okay. Mr. Germany, isn't it true that the Court -- this
21 Court, in its 2019 order, found that given the entire course of
22 events described here, the defendants' contention that the
23 servers were simply re-purposed and not intentionally destroyed
24 or wiped is flatly not credible?

25 **A.** I -- I can't say one way or the other.

1 **Q.** Mr. Germany, isn't it true that this report here, which
2 cites no individuals, which cites no specific documents, was
3 merely prepared to provide a cover for the loss of the data?

4 **A.** No.

5 **Q.** Okay. Mr. Germany, when you were on the stand last week,
6 do you remember talking to the Court while under oath -- I
7 believe it was Friday -- that Scott Hall filed a false
8 affidavit claiming that he saw pristine ballots during the 2020
9 Fulton County mail-in ballot hand re-count?

10 **A.** I think what I said was that we were familiar with
11 Mr. Hall based on claims he had made following the 2020
12 election and that those claims he had made we were not able to
13 substantiate after -- with an investigation.

14 **Q.** Did you personally review Mr. Hall's affidavit before
15 making that claim?

16 **A.** I have reviewed it in conjunction with numerous affidavits
17 I reviewed following the 2020 election.

18 MR. OLES: May I approach, Judge?

19 THE COURT: Yes.

20 BY MR. OLES:

21 **Q.** Mr. Germany, I direct your attention to what I just marked
22 as Davis Exhibit 2.

23 Can you identify that document?

24 **A.** This document is entitled Affidavit of Scott Graham Hall
25 in Support of Plaintiffs' Motion for Temporary Restraining

1 Order, and it is in the case *Lin Wood, Jr. v. Raffensperger* and
2 then members of the State Election Board.

3 **Q.** And is this the affidavit to which you are referring that
4 you reviewed?

5 **A.** I'll have to review it.

6 **Q.** Please.

7 **A.** (The witness complies.)

8 Yes, I believe this is the affidavit I was referring to.

9 MR. OLES: Judge, I would like to tender Davis
10 Exhibit 2 into evidence.

11 MR. BEDARD: Again, I object just to relevance and
12 also to the extent Mr. Oles is offering it for the truth of the
13 matter, of course.

14 THE COURT: I haven't seen it.

15 MR. OLES: It is right here.

16 MR. CROSS: Your Honor, we also object to the
17 relevance. This doesn't pertain to anything at issue in this
18 case.

19 THE COURT: Mr. Oles, I don't see any relevance of
20 this. I mean, it seems to be about -- I mean, there obviously
21 were issues for Mr. Hall and also for the plaintiff, Mr. Wood,
22 but that -- that were separate and apart from what is at issue
23 in this case. I mean, this deals about -- I mean, describing
24 the nature of the ballots and --

25 MR. OLES: Well, Judge --

1 THE COURT: -- the mail-in ballots. So I don't
2 really understand how the mail-in ballots and the questions
3 regarding whether they looked like they had -- were proper
4 is -- why that is relevant.

5 MR. OLES: Again, Judge, we're within the scope of
6 what the Court has identified as the issues for trial. I
7 believe that Mr. Germany -- we're offering it for the purpose
8 of impeaching Mr. Germany's credibility in this case as to the
9 testimony that he has given. He has given testimony regarding
10 this, and I would like to --

11 THE COURT: Well, given testimony in this case
12 regarding -- I mean, while he has been on the stand regarding
13 this?

14 MR. OLES: Well, he just said a few moments ago that
15 he testified about these claims, and he found that these claims
16 were not founded.

17 THE COURT: Counsel, go ahead.

18 MR. BEDARD: I was just going to say, I think the
19 context for which Mr. Oles is referring to is Mr. Germany last
20 week explaining his course of conduct and not taking Mr. Hall's
21 claims seriously because of his personal view that Mr. Hall was
22 incredible.

23 So I don't think this is really impeaching that
24 statement because it was Mr. Germany's personal opinions about
25 Mr. Hall. And if he is going to impeach him on this, then

1 we're going down a whole rabbit hole of Mr. Hall's claims.

2 So I don't think it is appropriate impeachment for
3 what Mr. Germany said.

4 MR. CROSS: Your Honor, I would just add to that:
5 Not only is it hearsay, but just so the Court knows, Scott Hall
6 evaded service of a subpoena for months while we tried to
7 develop discovery of what happened in Coffee County.

8 This is exactly what we predicted. This is a
9 backdoor effort to build some case that has nothing to do with
10 why we are here. It is driven by VOTER GA and Mr. Favorito.

11 Mr. Hall could have testified under oath. He chose
12 not to. If memory serves, he is under indictment.

13 THE COURT: All right. Well, I think it is too far
14 astray in terms of -- at least for the purpose it is being
15 tendered for because, you know -- so I'm not going to allow
16 admission of Davis Exhibit 2.

17 Was there -- Davis Exhibit 1 is admitted if I didn't
18 do that before. If you want to explore further why it was --
19 the witness' evaluation of Davis' testimony in this Court, you
20 can do that, but I just don't think that this is a proper way
21 of -- is too tangential at this point on this particular
22 exhibit, Exhibit 2.

23 MR. CROSS: Thank you, Judge.

24 THE COURT: Thank you.

1 BY MR. OLES:

2 Q. Mr. Germany, isn't it true that you did not -- you have
3 not personally spoken with Mr. Hall?

4 A. Yes.

5 I would want to correct one thing that Mr. Bedard said.
6 So I don't think it is true that we didn't take Mr. Hall's
7 claims seriously. I think it is true regarding Coffee County.
8 I think it is true to say that we didn't take -- or at least I
9 didn't take them at face value given that he had made, in my
10 view, what turned out to be false claims previously about the
11 2020 election.

12 So they were not something that I thought we could take at
13 face value without further investigation and evidence.

14 Q. So are you saying here today, sir, that you did not pursue
15 this investigation any further on the claims that he was
16 making?

17 A. Are you referring to his claims about the pristine
18 ballots?

19 Q. Yes, sir.

20 A. Our investigators in the Investigations Division did an
21 investigation into that.

22 Q. Okay. Is there -- and is there a report concerning that
23 investigation, sir?

24 A. Yes, I believe there is.

25 Q. And do you know what the result of that report was?

1 MR. CROSS: Your Honor, we're still on the same
2 topic.

3 THE COURT: I mean, I think that the issue here,
4 Mr. Oles, is that you seem to be going through the back door to
5 try to get -- pursue the question of what Mr. Hall observed as
6 to the hand-marked ballots that he doubted were in some way --
7 apparently were valid, and that really is not the issue in this
8 case.

9 So, you know, I understood that you wanted to explore
10 a little bit about why he was just tossing out -- why you
11 believe that he was -- this witness had not followed up on
12 Mr. Hall's concern -- other concerns that we've identified
13 regarding the operation of the Coffee County election system
14 that related to the -- the data system, but -- and it being
15 accessed, but that is something different.

16 And so I don't think you can restore -- this is not a
17 viable way of proceeding, for us to be dragged down into
18 discussing the details of this -- of the investigation into the
19 hand-marked ballots that is referenced in his affidavit of
20 11/17/20. It is a little bit of a rabbit hole.

21 So since you don't have all the time in the world,
22 move on to what you think -- another subject, or follow up on
23 something else that you wanted to follow up on.

24 BY MR. OLES:

25 Q. Mr. Germany, do you recall telling the Court on Friday

1 that Coffee County did not have any 2020 general election
2 problems?

3 **A.** No, I do not recall saying that.

4 **Q.** Okay. Do you believe that Coffee County had 2020 general
5 election problems other than -- other than the imaging of the
6 system, do you believe there were any problems with the
7 operation of Coffee County election systems in 2020?

8 **A.** I don't believe that their equipment had any problems. I
9 believe they committed some violations of Georgia law that I
10 know were identified and then an investigation was opened into
11 them. The one I can remember, of course, is the YouTube video
12 that Misty Hampton put out shortly after the election.

13 I recall there being issues. I can't recall if it was in
14 the re-count. I believe it was in the re-count where they
15 were -- they had to re-count all of our ballots like every
16 other county did.

17 So I do recall them having issues where I don't think the
18 people in Coffee County properly followed, you know, all
19 applicable procedures and laws.

20 **Q.** So you are not aware, sir, are you, whether or not Coffee
21 County had been reporting problems with their election system?

22 **A.** I'm not.

23 MR. OLES: Is it possible to put up PX 309? 309.

24 BY MR. OLES:

25 **Q.** Mr. Germany, I direct your attention to what has been

1 marked as PX 309 for identification.

2 Is this document familiar to you?

3 **A.** I don't believe so.

4 **Q.** What does it appear to be to you, sir?

5 **A.** This is a document, from what I can see, on letterhead of
6 Coffee County Board of Elections & Registration. I can't see
7 who it is signed by.

8 It seems to be signed by Eric Chaney. Okay.

9 **Q.** Do you know who Mr. Chaney was?

10 **A.** It says beneath his signature that he was a Coffee County
11 board member.

12 **Q.** Sir, who is the letter addressed to?

13 **A.** The letter is addressed to the House Governmental Affairs
14 Committee.

15 **Q.** And the next line?

16 **A.** Elections investigative hearing.

17 **Q.** And the next line?

18 **A.** Shaw Blackmon, chairman.

19 **Q.** And is this on particular letterhead, sir?

20 **A.** It is on the letterhead of Coffee County Board of
21 Elections & Registration.

22 **Q.** So does this appear to be to you a letter from the Coffee
23 County Board of Elections to House Governmental Affairs
24 Committee elections investigative hearing?

25 **A.** Yes.

1 Q. Okay.

2 MR. OLES: Judge, I'll move to admit PX 309.

3 THE COURT: Are there any objections?

4 MR. BEDARD: I don't think Mr. Germany can
5 authenticate the document.

6 THE COURT: I'm sorry?

7 MR. BEDARD: I don't think Mr. Germany can
8 authenticate the document.

9 MR. OLES: From my understanding, this is
10 authenticated by agreement.

11 THE COURT: Well, there were no objections to this in
12 the -- I'm just --

13 MR. OLES: Not as to --

14 THE COURT: I'm just asking the Curling plaintiffs
15 since it's their exhibit.

16 MR. BEDARD: I actually don't have the pretrial order
17 in front of me, Your Honor, so --

18 Well, Mr. Oles is correct. We don't have an
19 authentication objection in the PTO about this. I think we
20 would object again to hearsay to the extent any of the truth of
21 the matter asserted therein is --

22 THE COURT: Well, it is admitted -- it clearly is a
23 letter from who it says it supposedly is. You know, whether
24 everything is true in it is a whole other matter. But that
25 is -- that is -- so for all -- many a document that comes in.

1 So anyway, I'm going to admit it just simply for the
2 purpose of that it is a letter that was written to the House
3 Government Affairs Committee and signed by Mr. Chaney,
4 apparently on behalf of the Coffee County board or some members
5 of it.

6 BY MR. OLES:

7 **Q.** Mr. Germany, are you aware that Mr. Chaney, the signatory
8 of this letter, testified before the House Government Affairs
9 Committee on December 10th about Coffee County election
10 problems?

11 **A.** No.

12 **Q.** I direct your attention, please, sir, to the first
13 paragraph of the letter.

14 Would you read that paragraph, please, out loud.

15 **A.** We want to thank the Governmental Affairs Committee for
16 allowing the Coffee County Board of Elections to express its
17 dilemma regarding certifying the electronic re-count performed
18 in the November 3rd, 2020, general election. As you know, the
19 certification process requires the election supervisor to swear
20 under oath and under penalty of perjury that the certified
21 votes are a true and accurate reflection of the count or
22 re-count. In the instant case, the election supervisor of
23 Coffee County could not honestly make such an attestation given
24 the inherent inconsistencies existing within the electronic
25 summary report generated by the Dominion voting system.

1 **Q.** Thank you, sir.

2 Now, on the top of Page 2 of the letter, Mr. Chaney refers
3 to an Exhibit 5.

4 Do you see that, sir?

5 **A.** Yes.

6 **Q.** Could you turn to that Exhibit 5, please.

7 **A.** I don't have a copy of this.

8 **Q.** Oh, I'm sorry, sir.

9 MR. OLES: May I approach, Judge?

10 THE COURT: I'm letting you explore this, but let me
11 just tell you that we're 35 minutes in.

12 MR. OLES: I'll be quick, Judge.

13 THE COURT: And I'm not sure that this is relevant at
14 all, but I'm going to let you -- for purposes of just
15 proceeding here more efficiently, I'm going to let you at least
16 put something in here that you want to try to elicit. I know
17 that it is obviously not consistent with what apparently the
18 rest of the plaintiffs believe is relevant.

19 But go ahead.

20 MR. OLES: I'll get right to it, Judge.

21 BY MR. OLES:

22 **Q.** I direct your attention to that Exhibit 5.

23 Did you find it, Mr. Germany?

24 **A.** Yes.

25 **Q.** Okay. And what is the title on that exhibit?

1 **A.** The title is Discrepancies in the November 3rd, 2020,
2 General Election and Re-counts.

3 **Q.** Okay. Thank you, sir.

4 Now, I want to take you down to the line that says
5 11/3/2020, election day one.

6 Do you see that, sir?

7 **A.** Yes.

8 **Q.** And do you see the total votes there, 1000 -- or 15,237?

9 **A.** Yes.

10 **Q.** Okay. And do you see the next line where it says
11 11/17/2020 hand re-count with a total votes of 15,238, which is
12 an increase of one from the election day results.

13 Do you see that, sir?

14 **A.** Yes.

15 **Q.** Okay. Now, if I can take you down to the line that says
16 11/30/2020 electronic re-count. You walk over to the total
17 votes, it says 15,127 [sic].

18 Sir, do you see that?

19 **A.** The one I'm looking at says 15,258.

20 **Q.** I'm sorry. 15,258; correct.

21 Do you see that?

22 **A.** Yes.

23 **Q.** And in the next column over, it says, internal delta that
24 was an increase in 39 votes from the original.

25 Do you see that, sir?

1 And an increase in 40 votes from the hand re-count.

2 Do you see that, sir?

3 **A.** I think it would be the other way around, but, I mean, I
4 see the -- I don't think what you said was exactly what this --
5 I see it says compare three to one plus 39; compare three to
6 two plus 40.

7 **Q.** Correct. Comparing the --

8 MR. CROSS: Your Honor, I'm sorry to interject. We
9 are on a clock. I don't understand what the relevance of this
10 is.

11 As I understand it, this has to do with a hand
12 re-count and the counts coming out of the tabulators. We're
13 not -- no one in this case is asking this Court to get rid of
14 tabulators, scanners.

15 MR. BROWN: Your Honor, I would just like to add that
16 the evidence further shows that in further reference, all of
17 the numbers were reconciled within one number, and that is why
18 the plaintiffs, including Mr. Davis, did not make an issue out
19 of the accuracy of the Coffee County 2020 election results.
20 And as Mr. Cross said, it has absolutely nothing to do with
21 this case.

22 MR. OLES: Well, Judge, again, what we're here for,
23 as I understand it, is the constitutionality of the system, and
24 the system is more than simply a ballot-marking device. This
25 system is when you walk into that voting booth to the time that

1 that is counted.

2 THE COURT: When you walk into the voting booth,
3 what? I didn't hear the last part of it.

4 MR. OLES: It is from when you walk into that voting
5 booth and select your candidate to the time your vote is
6 actually counted. And what we're showing here is that -- or
7 what we are attempting to show here is that there is a problem
8 in that --

9 MR. CROSS: There is no --

10 MR. OLES: -- and that this is real evidence of a
11 problem in Coffee County which was reported to our state
12 legislature of problems with these counts.

13 THE COURT: I've allowed you to present it. I think
14 there are -- I'm not going to go through any of the possible
15 reasons or whatever else. But I have allowed you to because it
16 was listed in the evidence for you to do that. But I don't
17 think that we can go further than that at this juncture.

18 If there is some wrap-up question you want to ask
19 about this, go ahead and do it. And I duly note that the
20 plaintiffs' counsel believe -- have articulated that they
21 believe this is a distortion of what they -- of their -- what
22 they are trying to present here in this case.

23 BY MR. OLES:

24 Q. All right. I have one more question then, Mr. Germany.

25 On that same chart, do you see the next line down where it

1 says, second uploaded -- uploaded an additional 185 ballots?

2 **A.** Second uploaded 185 ballots, yes.

3 **Q.** And that there was no change to any of the results or to
4 the total votes counted even though there were an additional
5 185 votes?

6 **A.** It says, no change.

7 **Q.** Okay. Mr. Germany, do you still maintain based upon this
8 that you believe that there were no problems with the election
9 systems in Coffee County?

10 MR. BEDARD: I just object to the question to the
11 extent it is assuming the truth of what was included in that
12 document because it was hearsay.

13 MR. OLES: I'll rephrase, Judge.

14 BY MR. OLES:

15 **Q.** Mr. Germany, do you believe that based upon these reported
16 results from the Coffee County Board of Elections &
17 Registration, which they took the time and trouble to go and
18 testify before our legislature on, that you -- that someone in
19 the Secretary of State's office might have stopped to
20 investigate this, sir?

21 **A.** What we saw regarding issues in 2020 was -- we saw some
22 operator error of equipment, which is understandable given that
23 this was the first election they had used this equipment in.
24 We saw that especially in the primary in 2020, but we did
25 continue to see some in the general.

1 We saw some issues where counties forgot to upload certain
2 precincts which, fortunately, was then corrected with the audit
3 and then the re-count. We saw some issues where -- where
4 counties double-scanned certain ballots. Particularly saw that
5 in Fulton County.

6 But I wouldn't agree that we saw issues with the
7 equipment. I think we saw issues -- you know, the equipment
8 has to be utilized by people, by election officials. And the
9 issues that we saw were human error, and I suspect that is what
10 occurred in Coffee County as well.

11 **Q.** Mr. Germany, I invite you please to look at the third page
12 of the letter, second paragraph.

13 Would you read that paragraph, please.

14 **A.** Which paragraph?

15 **Q.** The second paragraph on the third page.

16 **A.** The second paragraph?

17 **Q.** Yes, sir.

18 **A.** The Coffee County Board of Elections has for many months
19 reported various aspects of these problems to the Secretary of
20 State, receiving no assistance in correcting these problems.
21 As for the investigation, the Secretary of State chose not to
22 assist us or help evaluate the root cause of the refusal to
23 certify the election re-count, but certified the statewide
24 election results despite our findings. The Coffee County Board
25 of Elections took action which it believed accurately reflected

1 the accurate vote of its citizens and certified that vote. If
2 it has done so erroneously, it has been done not nefariously or
3 belligerently, but honestly, humbly, and with one goal, to
4 certify the true vote of the citizens of Coffee County.

5 MR. OLES: Nothing further, Judge.

6 THE COURT: All right. Thank you.

7 Are you reserving this witness for later on?

8 MR. BEDARD: Yes, Your Honor. We'll likely call him
9 back in our case.

10 THE COURT: Is there anything else that we need to
11 deal with with this witness, subject to at this point from --
12 the other plaintiffs' counsel respective?

13 MR. CROSS: Not for Curling.

14 MR. BROWN: Not for the Coalition.

15 MR. OLES: Judge, may I tender 309, please?

16 THE COURT: 309 is this last exhibit --

17 MR. OLES: Yes.

18 THE COURT: -- that we were discussing?

19 COURTROOM DEPUTY CLERK: You admitted it.

20 THE COURT: I think I admitted it subject to the
21 hearsay objections, but that it was a record that had already
22 been agreed upon by counsel previously in connection with the
23 pretrial order.

24 Sir, as it appears that defense counsel may recall
25 you, please don't discuss your testimony with anyone else, and

1 you can go on with life otherwise.

2 THE WITNESS: Thank you, Your Honor.

3 THE COURT: Thank you.

4 MR. TYSON: Your Honor, while we're waiting for
5 Mr. Beaver to arrive from the witness room, I just wanted to
6 raise one issue with the Court. Mr. Knapp and I were -- I'm
7 sorry, Mr. Persinger and I were in Mr. Knapp's office
8 yesterday, and Mr. Persinger was given a subpoena to appear
9 this morning. He is here. He is not on the plaintiffs'
10 witness list, though.

11 I just don't want to hold him here if there is not a
12 reason for him being here. He obviously has his employment and
13 other things to do in a variety of cases, especially in some
14 large Fulton County ones.

15 THE COURT: So he is here for -- under the
16 plaintiffs' subpoena; is that right?

17 All right.

18 MR. CROSS: Yes, Your Honor. We were going to take
19 this up later before a break. We can do it now.

20 THE COURT: Well, let's take it up now --

21 MR. CROSS: Sure.

22 THE COURT: -- if he is going to have to be around
23 here when we -- if we need to know when he is --

24 MR. CROSS: So, Your Honor, it is a pretty discrete
25 issue, but important. When Your Honor allowed the State to

1 inspect Dr. Halderman's source code, you imposed certain
2 parameters on what they could do as a protocol, and part of
3 that was on what they could write down and take in the notes.
4 For example, they were not allowed to write down lines of code.

5 The problem we've run into is Mr. Persinger has
6 encoded his notes deliberately. And I'm going to hand it up so
7 Your Honor can take a look. We have asked for an explanation.
8 We asked for them not to do it again when they did an
9 inspection on Monday. They insisted that he do it. He did it.
10 And so we have no ability to figure out if they have -- what he
11 has written down and what he has taken.

12 Let me just hand Your Honor copies so you can see
13 what we're talking about. The one-pager is from yesterday.
14 And I'm not going to get into specifics of it on the record,
15 but let me give you the second one, which is from January.

16 THE COURT: Are these both from the same day?

17 MR. CROSS: The first one you have is from yesterday.
18 That is the -- if you look at the back of the first one I
19 handed you, you'll see the date of yesterday, the date of
20 January 15, the review.

21 If you look at the next one, which is multiple pages,
22 that is from -- I think it was January 4th. And if we start
23 with the one from January 4th, Your Honor, and turn to Page 2
24 of that, you'll see it is paper clipped. If you go to Page 2,
25 you'll see there is a little box in the right-hand corner in

1 the top. And you see there's arrows there pointing in
2 different directions in that little box, Your Honor.

3 Then if you go -- there's page numbers on the bottom.
4 If you go to Page 2, you'll see another box. It has numbers,
5 some letters. That is one aspect of the encoding. When you
6 actually read through the substance, there are things sometimes
7 that are written backwards, there are things that are sometimes
8 clearly written in code.

9 We asked about this on January 4th because
10 Dr. Halderman and Dr. Springall and myself were concerned that
11 the encoding might capture things that aren't being allowed.
12 It may be coding that captures the substance of the source
13 code. They would not answer other than to say this is how he
14 takes notes.

15 Since we were doing it again yesterday, we emailed
16 them in advance and asked that they confirm he would not do
17 encoded notes again and alerted them that we probably would
18 have to raise this with Your Honor.

19 We view this as a willful violation of the Court's
20 order because that protocol was specifically designed so that
21 our experts could be assured that nothing was taken down in
22 notes that should not be taken.

23 And Your Honor may recall, we took that protocol from
24 the protocol they proposed for the GEMS database. So they
25 can't really argue that it is unfair in any way because it was

1 their protocol, to begin with.

2 So as we are here, Your Honor, we have got a pretty
3 serious concern because we don't know what this means, we don't
4 know what he took with him, and they have been unwilling to
5 share.

6 So the last point, why the subpoena? Because they
7 won't answer our questions, and we thought Your Honor may want
8 to put him on the stand and we can ask him under oath what it
9 means.

10 I do want to be clear. We're not calling him in our
11 trial. We're not going to allow this to be a back door to put
12 him on the case in our trial, but we do need an answer from him
13 ideally sworn, what does this mean, why did he do it, and what
14 did he take with him?

15 THE COURT: So why can't you take a deposition in the
16 evening? Do we need to do it in court?

17 MR. CROSS: That is a fair idea, Your Honor. We
18 certainly could look at that. Yesterday, we were scrambling,
19 and that was the only thing we could think of was Your Honor
20 may want to ask him questions.

21 THE COURT: Well, given the scope of my knowledge
22 about code, which is --

23 MR. CROSS: Not much.

24 THE COURT: -- dependent on others, I'm not sure --

25 MR. CROSS: We're happy to do that. That is an easy

1 solution, Your Honor.

2 MR. TYSON: Your Honor, if I could just be heard
3 briefly to respond to Mr. Cross.

4 THE COURT: Yes.

5 MR. TYSON: I believe, as the Court is aware,
6 Mr. Persinger has served as an expert in any number of cases
7 involving federal prosecutions, state prosecutions. He is
8 regularly reviewing software and other computer-related items.

9 THE COURT: Yes.

10 MR. TYSON: When there was a question when we were in
11 Michigan regarding some of the arrows and the notes on the
12 code, Mr. Persinger explained to everybody there was no source
13 code in his notes, that this is his method of taking notes.

14 From our perspective, this has already -- and I think
15 we have raised, you know, concerns about work product having to
16 leave notes with the plaintiffs as it is.

17 In our view, requiring further disclosure of
18 Mr. Persinger's methods of taking notes would further disclose
19 what we were interested in looking at, all those various
20 pieces.

21 I think the only relevant question for the Court is,
22 is there source code in these notes? Mr. Persinger has said
23 there is not. He will say under oath there is not if he needs
24 to say that.

25 I don't look at Mr. Persinger's method of taking

1 notes as really any different than if he took notes in
2 shorthand or had especially bad handwriting that the plaintiffs
3 couldn't read. This is the method by which he takes notes. He
4 can testify to that.

5 So we don't think there is any basis for that. But
6 if Your Honor wants him to say under oath that there is no
7 source code in these documents, we're happy to have him do that
8 or file a declaration to that effect.

9 MR. CROSS: Your Honor, a quick follow-up on that.

10 The reason that is not enough is the reason the
11 protocol exists. Again, recall when we were asking for
12 Dr. Halderman to inspect the GEMS database, this was their
13 protocol. So they were not satisfied at that time with
14 Dr. Halderman walking out of there and simply making a
15 representation to them that he had not written down anything he
16 was not allowed to take with him. They themselves wanted to be
17 able to review the votes to ensure that he did not take
18 anything with him. The protocol now is the same.

19 And so if all we're entitled to is for him to say he
20 didn't take it, then reviewing the notes becomes pointless.
21 This is a deliberate circumvention of that protocol that they
22 created. So it is not just asking in a deposition, did you
23 take this? It is walk us through what this means so our
24 experts can be assured you did not take something here that you
25 weren't allowed to take.

1 It is their protocol. To object to it now is
2 disingenuous.

3 MR. TYSON: Your Honor, just briefly on those points,
4 I think -- I hate to take the Court's time on this. But if the
5 scope of the deposition is going to be, you must tell us every
6 single thing in the notes, that, I think, is going to be
7 something that is going to require Your Honor's intervention to
8 address that just because Mr. Persinger has a method he has
9 used from what I have -- I'm not testifying for him.

10 What I have discussed with him, he considers this to
11 be a very personal and trade secret method based on how he
12 conducts these kinds of reviews. He would talk about that in a
13 deposition or on the stand.

14 But I think, again, the protocol says the reviewer
15 must make copies of all notes taken during the review and leave
16 a copy of those notes with plaintiffs' representative before
17 leaving the inspection facility. There is nothing about scope
18 of review, other pieces that go with that. My expectation
19 would be if Dr. Halderman had utilized a similar review process
20 for the GEMS databases, if this Court had ordered that, that I
21 would expect him to take notes in whatever fashion he would
22 take them.

23 So, again, I think we're at a point where I think the
24 critical thing is, is there source code in these notes? And
25 that is the issue.

1 THE COURT: Well, I can't just -- if you want to have
2 an examination of the -- of Mr. Persinger later on in the day
3 or tomorrow morning before we have open court, I'll do that.

4 Your current anticipation is that Dr. Halderman will
5 testify on Thursday, so we need to do it before then. I don't
6 know how long it will take, and I also just know that there is
7 only so much that the court reporter can -- hands can manage,
8 so we might have to end early on something.

9 So why don't you-all just discuss between yourselves
10 what will be the most convenient time. And if it is now, then
11 we can just empty the courtroom too.

12 MR. TYSON: And my only concern, Your Honor, is
13 Mr. Persinger is here right now. He doesn't have any of his
14 equipment with him, obviously, because he had to give up his
15 electronics. If we can send him on his way and then have him
16 come back, he lives a little bit of a distance away.

17 THE COURT: That's fine. I mean, y'all just figure
18 out a time. But since we've made for short breaks, I mean,
19 we're just going to have to either figure out a time at the
20 beginning or the end of the day if he wants to come back.

21 I mean, the truth is, there is very little traffic
22 today, so there are some advantages of the day. And I don't
23 know where he lives, so how far his equipment is from him.

24 But anyway, you-all can converse, and we'll work it
25 out.

1 MR. CROSS: Thank you, Your Honor.

2 THE COURT: Hi.

3 MR. MARTINO-WEINHARDT: Good morning, Your Honor.

4 Matthaeus Martino-Weinhardt again for the Curling plaintiffs.

5 We call Merritt Beaver as our next witness.

6 COURTROOM DEPUTY CLERK: Please raise your right
7 hand.

8 **(Witness sworn)**

9 COURTROOM DEPUTY CLERK: Please have a seat. If you
10 would, state your name and spell your full name for the record,
11 please.

12 THE WITNESS: My name is Sanford Merritt Beaver.

13 S-A-N-F-O-R-D, M-E-R-R-I-T-T, B-E-A-V-E-R. I go by Merritt.

14 Whereupon,

15 SANFORD MERRITT BEAVER,

16 after having been first duly sworn, testified as follows:

17 CROSS-EXAMINATION

18 BY MR. MARTINO-WEINHARDT:

19 Q. Good morning, Mr. Beaver.

20 Mr. Beaver, you were the chief information officer or CIO
21 of the Secretary of State's office?

22 A. Yes, I was.

23 Q. You served as the CIO from about 2013 until the end of
24 last year; is that right?

25 A. It's about that, yes.

1 **Q.** But you left the Secretary's office at the end of 2023?

2 **A.** The end of '23.

3 **Q.** Was it your decision to leave?

4 **A.** Yes.

5 **Q.** Why did you leave?

6 **A.** I'm 67. It is time.

7 **Q.** Fair enough.

8 Mr. Beaver, as the former CIO, you agree that election
9 software should not be released to the public; correct?

10 **A.** Correct.

11 **Q.** If you released election software to the public, you would
12 be giving potentially bad actors a roadmap how to basically get
13 in and access the system?

14 **A.** One piece.

15 **Q.** If bad actors could get their hands on the election
16 software, they would have a roadmap for how to get in and
17 access a piece of the election system?

18 **A.** They would have one piece of a roadmap.

19 **Q.** Mr. Beaver, you're aware that Dr. Halderman provided a
20 report on July 1st, 2021, in this case?

21 **A.** Yes, I am.

22 **Q.** As of February 2nd, 2022, you had not read that report;
23 correct?

24 **A.** I don't know what the date was when I finally read it.

25 **Q.** Well, Mr. Beaver, you recall you gave a deposition in this

1 case on February 2nd, 2022?

2 **A.** Okay. Yes.

3 **Q.** And as of that deposition on February 2nd, 2022, you had
4 not read Dr. Halderman's report?

5 **A.** Okay. If that is what it was, yes.

6 **Q.** As of February 2nd, 2022, you stated you had never even
7 heard of Dr. Halderman's report; right?

8 **A.** Okay.

9 **Q.** You agree with me?

10 **A.** If that was what the deposition was, yes, because it was
11 2022. That is two years ago, so what I specifically said I
12 would have to read off the deposition.

13 **Q.** We can take a look at the deposition. If you go to the
14 large binder, Mr. Beaver, and you go to Tab 1 in the large
15 binder in front of you, that is the transcript of your
16 February 2nd, 2022, deposition. I'll direct you to Page 155.

17 **A.** Okay.

18 **Q.** And you were asked beginning on Page 155, Line 10,
19 question: Couple follow-up questions on that I forgot to ask.
20 On Dr. Halderman's report, which was Exhibit 8, are you aware
21 that that report has been sealed, meaning it's been kept
22 confidential since it was issued on July 1?

23 Answer: As I said, I have never heard of that document,
24 never seen that document, so I wouldn't know anything about how
25 it is being managed.

1 Did I read that correctly?

2 **A.** Yes, you did.

3 **Q.** So, Mr. Beaver, as of your deposition on February 2nd,
4 2022, you hadn't heard of Dr. Halderman's report; correct?

5 **A.** It looks like, yes.

6 **Q.** And as of March 10th, 2022, a month later, you also had
7 not, as part of your job as CIO, reviewed Dr. Halderman's
8 report at that time; correct?

9 **A.** Okay.

10 **Q.** You agree with me?

11 **A.** If that is what it says, then yes.

12 **Q.** You have no basis to disagree that by March 2022, a month
13 later, you had not read Dr. Halderman's report at that point in
14 your role as CIO?

15 **A.** No, I don't disagree with that.

16 **Q.** You weren't aware that the Halderman report was available
17 to the Secretary of State's office months before that?

18 **A.** I think I said it was not. So I was not.

19 **Q.** You're not aware that plaintiffs' counsel had asked the
20 Court in November 2021 to make the report available to
21 individuals at the Secretary of State's office?

22 **A.** I think I said in this I had not, and I still agree with
23 that.

24 **Q.** Well, Mr. Beaver, you said you had never heard of that
25 document; correct?

1 **A.** That is what this document says, and I still feel that is
2 true.

3 **Q.** And so you agree that at that time in February 2022, you
4 had no knowledge of how the report was being managed; correct?

5 **A.** Correct.

6 **Q.** So you weren't aware that, in fact, several months before
7 that, plaintiffs in this case had asked the Court at a hearing
8 to make the report available to authorize that the Court be
9 made available to individuals at the Secretary of State's
10 office?

11 **A.** No. I think it was real clear. I had not seen it.

12 **Q.** And as of March 10th, 2022, you weren't aware of any
13 specific security measures that the Secretary's office had
14 implemented since July of 2021 to protect against
15 vulnerabilities with the voting equipment; true?

16 **A.** If that is what that says, then it is true.

17 **Q.** You don't have any basis to disagree that as of March
18 2022, you weren't aware of any specific security measures that
19 the Secretary's office had implemented to protect against
20 vulnerabilities with the voting equipment; correct?

21 MR. BOYLE: Your Honor, objection. Asked and
22 answered.

23 THE COURT: Well, the witness -- I'm going to
24 instruct the witness it is not an answer to just simply say, if
25 that is what it says.

1 I mean, if you need to -- then as so, but -- because
2 we need to know, have you looked at what your testimony is?
3 And -- and if you think that is correct, then you say, I think
4 it is correct that, whatever it was.

5 THE WITNESS: Yes, I have looked at the testimony. I
6 believe that is correct.

7 THE COURT: And the testimony is as summarized by
8 plaintiffs' counsel?

9 THE WITNESS: Yes.

10 THE COURT: All right.

11 BY MR. MARTINO-WEINHARDT:

12 Q. Thank you.

13 Mr. Beaver, let's talk about some of the measures the
14 Secretary's office took during your time as CIO to try to
15 secure the election system.

16 The Secretary's office, one of the things it does is hire
17 outside firms to conduct cybersecurity assessments; right?

18 A. You said a very general question. You said the election
19 systems.

20 Can you be specific as to what part are we talking about?

21 Q. Any part of the election system.

22 You would agree with me that one of the things the
23 Secretary's office does is work with outside firms to conduct
24 cybersecurity assessments; right?

25 A. We use outside firms -- or we did use outside firms to do

1 cybersecurity assessments on some of the election systems, the
2 ones that's managed by my office.

3 **Q.** One of the firms retained by the Secretary's office to
4 perform those cybersecurity assessments over the years was
5 Fortalice; correct?

6 **A.** Correct.

7 **Q.** As of 2022, Fortalice was a company that the Secretary's
8 office relied on to help with securing the election system?

9 **A.** For some of the election systems, not all.

10 **Q.** And for that reason, Fortalice was a company that the
11 Secretary's office relied on to help with securing the election
12 system?

13 THE COURT: I don't think that -- securing the
14 election system is a much broader term. You're going to have
15 to be a little more specific than that.

16 You're talking about testing, or are you talking
17 about something else?

18 MR. MARTINO-WEINHARDT: I'll ask a more specific
19 question.

20 BY MR. MARTINO-WEINHARDT:

21 **Q.** As of 2022, Fortalice was conducting annual cybersecurity
22 assessments for CES, the Center for Election Services; correct?

23 **A.** No.

24 **Q.** You're saying that is not correct?

25 **A.** It is not correct.

1 **Q.** Mr. Beaver, do you recall being deposed on February 2nd,
2 2022, and at that deposition testifying that Fortalice is the
3 one that does the annual cybersecurity assessments for CES?

4 **A.** Fortalice does the annual cybersecurity for all the
5 systems for Secretary of State that we managed, which include
6 the election registration system. CES uses data from that
7 system, but that is not necessarily all of the CES systems.

8 So that is why I asked you to be specific. There are a
9 number of systems that make up the election system. Fortalice
10 was not responsible for a total broad assessment. They focused
11 on the things -- the systems that the Secretary of State
12 managed.

13 **Q.** Mr. Beaver, could you turn to Page 72 of that deposition
14 transcript.

15 **A.** (The witness complies.)

16 **Q.** I direct you to Line 24 on Page 72 of your February 2nd,
17 2022, deposition transcription.

18 Question: You mentioned Fortalice. Is Fortalice the
19 one --

20 THE COURT: Wait. I can't see Line 22.

21 MR. MARTINO-WEINHARDT: 24, Your Honor.

22 THE COURT: Sorry.

23 Go ahead.

24 MR. MARTINO-WEINHARDT: Tony, are you able to bring
25 up Page 72?

1 THE COURT: It is up.

2 MR. MARTINO-WEINHARDT: You have it, Your Honor?

3 THE COURT: Uh-huh.

4 MR. MARTINO-WEINHARDT: My screen at the podium
5 appears to be the only one that's not working.

6 THE COURT: It is the bottom. I only have the last
7 two -- four lines.

8 BY MR. MARTINO-WEINHARDT:

9 **Q.** Question: You mentioned Fortalice. Is Fortalice the one
10 that done the annual cybersecurity assessment for CES?

11 Answer: In the recent years, yes.

12 Question: How long has Fortalice done it?

13 Answer: I would have to look for sure, but I would guess
14 close to five years.

15 That was your testimony; correct, sir?

16 **A.** I am guessing the context of that question is being taken
17 out of context now.

18 **Q.** That was your testimony, sir, wasn't it?

19 **A.** That is what is typed there, yes.

20 **Q.** That was your testimony under oath, same as you are here
21 today; correct?

22 **A.** Correct.

23 I don't know the context of what led up to that statement.
24 As I said, Fortalice did not do all of CES; it did the parts
25 that -- where they deal with the Secretary of State's systems

1 that I managed.

2 **Q.** But, sir, you don't dispute that Fortalice was conducting
3 cybersecurity assessments of parts of CES; right?

4 **A.** No.

5 **Q.** You tried a number of different companies before Fortalice
6 as well; right?

7 **A.** Yes.

8 **Q.** But Fortalice was the first company that you actually felt
9 was doing a very good job; right?

10 **A.** Correct.

11 **Q.** And you specifically retained Fortalice to do certain
12 cybersecurity assessments in 2017 and 2018; right?

13 **A.** Yes.

14 **Q.** And the networks that they examined for that included
15 election-related networks; correct?

16 **A.** Fortalice was not dedicated to just elections. They did
17 all systems for Secretary of State, which includes elections,
18 corporations, professional licensing, securities, and all of
19 our in-house systems, such as mail, personal storage, desktop,
20 networks, things like that.

21 **Q.** Mr. Beaver, my question was a bit more specific than that.

22 **A.** Okay.

23 **Q.** You agree you retained Fortalice to conduct certain
24 cybersecurity assessments in 2017 and 2018.

25 You are with me so far?

1 **A.** Yes.

2 **Q.** And in those assessments, the networks that they examined
3 for that included election-related networks; true?

4 **A.** We do not have dedicated elections networks; we have
5 networks. Our systems run on those networks. So when you say
6 an elections network, that implies that we have specific
7 elections networks. They test Secretary of State networks. Of
8 those, election systems run on that, one of many systems that
9 run on that.

10 So they are not elections networks. They are Secretary of
11 State systems. I don't want to be misunderstood that they are
12 just focused on elections. They were focused on all systems
13 that Secretary of State manages.

14 **Q.** Mr. Beaver, do you recall testifying at a hearing in this
15 case around July of 2019?

16 **A.** I remember being in a hearing. If it was 2019, I'm okay
17 with that.

18 **Q.** And do you recall when asked at that hearing, the networks
19 that Fortalice examined for that included elections-related
20 networks; correct, sir? You answered yes?

21 **A.** Once again -- now you're using the word includes, which
22 would say it is part of a bigger network.

23 MR. BOYLE: If counsel is going to refer to a
24 transcript, could you please cite the page and let -- so
25 Mr. Beaver can look at the transcript.

1 MR. MARTINO-WEINHARDT: Certainly.

2 BY MR. MARTINO-WEINHARDT:

3 Q. If you look at your smaller binder, Tab 3, this is a
4 portion of the transcript from the July 25th, 2019, hearing
5 with this Court.

6 On Page 29, beginning on Line 16, and states, question:
7 You retained a company called Fortalice to do cybersecurity
8 assessments in 2017 and 2018; right?

9 Answer: Yes.

10 Question: And the networks that they examined for that
11 included elections-related networks; correct, sir?

12 Answer: Yes.

13 Do you recall providing that testimony?

14 A. Yes, that's true. And this speaks to exactly what I'm
15 saying. It includes. It is not an elections network. It
16 includes. Elections is part of it.

17 Q. And to be clear, Mr. Beaver, I was asking you exactly the
18 same question.

19 A. Okay. It didn't sound like that to me.

20 Q. Mr. Beaver, what networks -- what election-related
21 networks interact with -- sorry, withdrawn. Let me ask it
22 differently.

23 What networks interact with Georgia's election networks?

24 You referred to networks that interact with Georgia's
25 elections networks.

1 **A.** So Georgia Secretary of State has a network environment
2 that covers the capitol, the Twin Tower building, we had two
3 data centers, and we have Macon.

4 **Q.** What was the last one?

5 **A.** Macon. Macon, Georgia.

6 So those are the campuses where we have networks. And
7 from anywhere in those networks, you can get on the Secretary
8 of State's network, and so we manage all of those under one
9 umbrella.

10 **Q.** Turning to the first of the Fortalice cybersecurity
11 assessments, Fortalice conducted a cybersecurity assessment in
12 October of 2017; correct?

13 **A.** Yes.

14 **Q.** Now, if you could turn to Exhibit 18. That is at Tab 8 in
15 the small binder.

16 **A.** Okay.

17 **Q.** Do you have that?

18 **A.** Uh-huh (affirmative).

19 **Q.** And the cover says, Office of the Georgia Secretary of
20 State Cyber Risk Assessment October 2017.

21 Do you see that?

22 **A.** Yes.

23 **Q.** And if you just briefly flip to the next page, towards the
24 top, it says, Merritt Beaver, chief information officer,
25 Georgia Secretary of State.

1 Do you see that?

2 **A.** Yes.

3 **Q.** That is you?

4 **A.** Yep.

5 **Q.** You recognize this as the report that Fortalice provided
6 of its October 2017 cybersecurity assessment?

7 **A.** Yes.

8 **Q.** And you requested this assessment on behalf of the
9 Secretary's office?

10 **A.** Yes, I did.

11 MR. MARTINO-WEINHARDT: We offer Exhibit 18.

12 MR. BOYLE: No objections, Your Honor.

13 THE COURT: It is admitted.

14 BY MR. MARTINO-WEINHARDT:

15 **Q.** Mr. Beaver, if you could turn to Page 13 of 69, you see
16 the header that says Security Risks and Recommendations.

17 Mr. Beaver, do you see that?

18 **A.** No, I don't.

19 **Q.** In blue?

20 **A.** On Page 18 -- oh, you said 18?

21 **Q.** Page 13 of 69.

22 **A.** Mine says lack of two-factor authentication.

23 **Q.** At Tab 8?

24 **A.** In Tab 8.

25 **Q.** To be clear, I'm referring to the page numbers at the

1 bottom of the page.

2 **A.** That's what I'm looking at, Page 13.

3 **Q.** Do you see it on your screen, Mr. Beaver?

4 **A.** Yeah. That is not the page I'm looking at.

5 **Q.** Perhaps we can refer to the screen. I have Security Risks
6 and Recommendations.

7 **A.** Okay.

8 MR. BOYLE: Counsel, I think you're referring to the
9 Bates number, but page number is different. Maybe that is
10 causing the problem.

11 THE COURT: So you are --

12 THE WITNESS: That is Page 11.

13 THE COURT: On the bottom?

14 MR. MARTINO-WEINHARDT: Right. I'm referring to the
15 page number at the very bottom where it says Curling
16 Plaintiffs' Exhibit 18, Page 13 of 69.

17 I realize there's a lot of different page numbers on
18 this.

19 THE WITNESS: I'm with you.

20 BY MR. MARTINO-WEINHARDT:

21 **Q.** And you see at the top in blue the header Security Risks
22 and Recommendations?

23 **A.** Yes.

24 **Q.** And underneath that, it says, based on the analysis from
25 this engagement, the Cloudburst Security team uncovered the

1 following 22 risks.

2 Do you see that?

3 **A.** Yes.

4 **Q.** And then it lists them?

5 **A.** Yes.

6 **Q.** So in this October 2017 assessment, Fortalice identified
7 22 cybersecurity risks?

8 **A.** Yes.

9 **Q.** Number 10 reads, lack of security controls for PCC, Inc.

10 **A.** Yes.

11 **Q.** And that corresponds to the security risks with the voter
12 registration database; right?

13 **A.** I would have to go look.

14 **Q.** Do you recall, sir, that PCC Technology at the time was
15 the vendor that ran the voter registration system?

16 **A.** They also ran the corporations system, so a reference as
17 just PCC could be corporations.

18 **Q.** If you flip to Page 23 of 69 of Curling Plaintiffs'
19 Exhibit 18, and it says at the top, lack of security controls
20 for PCC, Inc., and under the description it starts with eNet
21 Georgia's voter registration database is owned, operated, and
22 maintained by third-party provider known as PCC Technology,
23 Inc.

24 Do you see that?

25 **A.** Yes, I do.

1 **Q.** So you would agree with me that this risk analyzed in this
2 report relates to the voter registration database; correct?

3 **A.** It looks like it does.

4 **Q.** So part of the scope of this October 2017 assessment was
5 the security of the voter registration database; fair?

6 **A.** Okay. It is one of many. It is one of the things they
7 identified. We didn't target any system. It is up to
8 Fortalice to find things.

9 **Q.** Right. In this October 2017 assessment --

10 **A.** Yes.

11 **Q.** -- the voter registration database was within the scope of
12 what Fortalice assessed?

13 **A.** Yes.

14 And when you say database, they are speaking to the
15 application that manages the database, not the actual database
16 itself. They write the application that collects the data to
17 put it in the database. So it is the application that PCC
18 writes. So they never store the database itself. That is
19 something that the Secretary of State stored.

20 **Q.** But through that application from PCC, that is something
21 that you used to gain access to data that is maintained in the
22 voter registration database; true?

23 **A.** Through the application that PCC wrote, we use that to
24 manage the data that is in the database.

25 **Q.** So access to Georgia's voter registration database was

1 within the scope of what Fortalice was assessing back in
2 October 2017 --

3 **A.** Yes.

4 **Q.** -- right?

5 **A.** Yes.

6 **Q.** If we could turn to Page 5 of 69 of Exhibit 18. And you
7 see here the colorful grid that is titled Risk Heat Map.

8 Do you see that?

9 **A.** I haven't got there yet.

10 THE COURT: Remind me what page this is.

11 MR. MARTINO-WEINHARDT: This is Page 5 of 69 --

12 THE COURT: Thank you.

13 MR. MARTINO-WEINHARDT: -- at the very bottom of the
14 page.

15 THE WITNESS: Okay.

16 BY MR. MARTINO-WEINHARDT:

17 **Q.** And this colorful grid here is titled the Risk Heat Map;
18 right?

19 **A.** Yes.

20 **Q.** And the horizontal axis at the bottom lists severity from
21 one being insignificant to four being significant; right?

22 **A.** Right.

23 **Q.** And here, there are seven risks listed as significant?

24 **A.** Yes.

25 **Q.** And then three risks listed as medium severity?

1 **A.** Yes.

2 **Q.** Mr. Beaver, if we could turn to Tab 9 of that binder.
3 This is Plaintiffs' Exhibit 17.

4 **A.** Uh-huh (affirmative.)

5 **Q.** Do you recognize this as a report prepared by Fortalice
6 for its February 2018 cybersecurity assessment?

7 **A.** Yes.

8 **Q.** And you also requested Fortalice to conduct this
9 assessment?

10 **A.** Yes.

11 MR. MARTINO-WEINHARDT: We offer Plaintiffs'
12 Exhibit 17.

13 MR. BOYLE: No objections, Your Honor.

14 THE COURT: I'm sorry.

15 Where is it?

16 MR. MARTINO-WEINHARDT: This is at Tab 9, Your Honor.

17 THE COURT: Thank you.

18 It is admitted.

19 BY MR. MARTINO-WEINHARDT:

20 **Q.** If we could go to Page 8 of 33, again using the page
21 numbers at the very bottom. Curling Plaintiffs' Exhibit 17,
22 Page 8 of 33.

23 Are you there?

24 **A.** Yep.

25 **Q.** And here again at the top it says Security Risks and

1 Recommendations?

2 **A.** Yes.

3 **Q.** And it says, based on the analysis from this engagement,
4 the Cloudburst Security team uncovered the following 15 risks.

5 Do you see that?

6 **A.** Yes.

7 **Q.** So in February 2018, in its assessment, Fortalice
8 identified 15 cybersecurity risks?

9 **A.** Yes.

10 **Q.** If you could turn to Page 3 of this report, to Page 3 of
11 33. And at the top, it refers to PCC Technology again.

12 Do you see that?

13 **A.** Page 3 of 33?

14 **Q.** Correct.

15 **A.** Mine says executive summary.

16 **Q.** Right. And below that it says, between November 2017 and
17 February 2018, Cloudburst Security and Fortalice Solutions --
18 Cloudburst Security team conducted a vendor cyber risk
19 assessment on PCC Technology, Inc.

20 And then it continues.

21 Do you see that?

22 **A.** Yes.

23 **Q.** PCC Technology, as we were talking about, that was the
24 vendor that, among other things, operated the voter
25 registration database or the application, I think, they

1 operated --

2 **A.** No, they did not operate it.

3 **Q.** PCC Technology provided the application through which you
4 would access the voter registration?

5 **A.** They wrote the application.

6 **Q.** So as in November 2017, this February 2018 assessment
7 again examined the security of access to the voter registration
8 database?

9 **A.** Yes.

10 MR. BOYLE: Your Honor, at this point we would object
11 to any further questions about voter registration, which is not
12 an issue in the case. Counsel has asked several questions
13 about it already.

14 MR. MARTINO-WEINHARDT: Your Honor, it goes generally
15 to the cybersecurity practices of the Secretary's office, as
16 well as credibility, as will become clear.

17 THE COURT: Well, I'm going to allow you to proceed
18 at this juncture, but let's not get too far into the weeds.
19 But that is fine.

20 MR. MARTINO-WEINHARDT: Thank you, Your Honor.

21 THE COURT: I understand there is relevance to the
22 security risks as a whole.

23 MR. MARTINO-WEINHARDT: That's right, Your Honor.

24 BY MR. MARTINO-WEINHARDT:

25 **Q.** Mr. Beaver, if you could turn to Tab 10.

1 **A.** Is there a question in these, or are we just looking at
2 pages?

3 **Q.** I have some questions --

4 **A.** Okay. Just checking.

5 **Q.** -- if you could turn to Tab 10.

6 **A.** I'm there.

7 **Q.** This is Plaintiffs' Exhibit 95.

8 Do you recognize this as a report prepared by Fortalice
9 for a November 2018 cybersecurity assessment?

10 **A.** Yes, I do.

11 **Q.** And as with the others, you requested that Fortalice
12 conduct this assessment?

13 **A.** Yes, I did.

14 MR. MARTINO-WEINHARDT: We offer Plaintiffs'
15 Exhibit 95.

16 MR. BOYLE: Your Honor, we have several objections in
17 the pretrial order which I will restate.

18 We object to this document as not authenticated, that
19 it is relevant, that it would violate Rule 403 as confusing or
20 a waste of time, and that portions of it are hearsay.

21 MR. MARTINO-WEINHARDT: Your Honor, the witness just
22 authenticated it. It is relevant to the cybersecurity
23 practices of the Secretary's office. This is bench trial, so
24 Rule 403 isn't a concern here.

25 THE COURT: It is admitted.

1 I will note that this was also the subject of prior
2 hearings and findings as well, just for the record.

3 All right.

4 MR. MARTINO-WEINHARDT: Thank you, Your Honor.

5 BY MR. MARTINO-WEINHARDT:

6 Q. Mr. Beaver, if you could turn to Page 5 of 50 in Curling
7 Plaintiffs' Exhibit 95.

8 A. Yes.

9 Q. And do you see a number of bullet points on that page?

10 A. Yes.

11 Q. And the first bullet point says there are 20
12 recommendations of which 14 are low to no cost?

13 A. I see that, yes.

14 Q. So in November of 2018, Fortalice made 20 additional
15 cybersecurity recommendations; right?

16 A. Yes. Every year.

17 Q. 14 of those were categorized as low to no cost?

18 A. Yes.

19 I had a standing. If my assessment company doesn't find
20 something, I don't use them again.

21 Q. And why is that?

22 A. They are not doing their job.

23 Q. Can you explain what you mean by that?

24 A. Okay. So we're talking about IT here, IT and security.

25 IT is made up of many applications that change daily. The

1 compatibility of applications changes every time something
2 changes. That is why you have to look every year to see if
3 some compatibility has changed.

4 I expect my security companies to find where those
5 incompatibilities are so we know what to work on. Some things
6 may not have been an issue last year and are an issue this
7 year.

8 The recommendations they make tell us their basic cookbook
9 solution on how to solve it. That doesn't necessarily mean the
10 Secretary of State will use that cookbook because it may also
11 be in conflict with another system. So mitigation is what
12 you -- I look at. I looked at is, I see a list, how do we
13 mitigate them?

14 Next year they may come back and say, oh, two of these are
15 still on here. That is right. But we mitigated them
16 differently than they suggested because some -- the issue that
17 is causing it may be something we have to live with because the
18 system won't work without that. The important part of
19 cybersecurity is mitigating. You don't ever get rid of all of
20 the problems. That is IT.

21 So looking at lists of numbers tells me they are doing
22 their job. They are helping me find where I need to focus.

23 **Q.** The job of Fortalice is to identify the vulnerabilities;
24 right?

25 **A.** Yes.

1 **Q.** So if you could turn to Page 8 of 50 in this exhibit,
2 still Exhibit 95, and it lists here 2017, top ten risks status
3 in 2018.

4 Do you see that?

5 **A.** Yes.

6 **Q.** And the last sentence of that paragraph reads, of the top
7 ten risks from the 2017 report, three were not tested during
8 2018 assessment, three were remediated in the past year with
9 compensating controls, and three remain unresolved.

10 Do you see that?

11 **A.** Yes.

12 **Q.** So Fortalice determined in November 2018 that three of the
13 top ten risks identified a year earlier had been remediated?

14 **A.** Uh-huh (affirmative).

15 **Q.** Correct?

16 **A.** That's what it says, yes.

17 **Q.** But in this November 2018 assessment, Mr. Beaver, unlike
18 the two prior assessments we looked at, Fortalice did not look
19 at PCC; correct?

20 **A.** It doesn't look like it, no.

21 **Q.** So Fortalice, in November of 2018, did not reexamine
22 access to the voter registration system; right?

23 **A.** That is incorrect.

24 **Q.** Well, nothing in this report, Mr. Beaver, indicates that
25 the vulnerabilities identified with respect to PCC in October

1 of 2017 and February 2018 were remediated; right?

2 **A.** It doesn't reference any of that, so you're making an
3 assumption. So I would say the answer is no.

4 **Q.** Well, Mr. Beaver, you put PCC outside of the scope of this
5 November 2018 assessment; correct?

6 **A.** I had Fortalice look at our network system IT environment.
7 We did that every year. Some years they brought in information
8 about PCC if it needed to be raised; other years they didn't if
9 it didn't need to be raised. I can -- since I don't have the
10 details behind how they picked these ten, I can't speak to why
11 PCC was not included in this. I can only assume that it didn't
12 raise its head high enough to be in the ten.

13 **Q.** Mr. Beaver, that is not correct, is it?

14 **A.** Why do you say that?

15 **Q.** You recall that you put PCC outside of the scope of the
16 November 2018 assessment; right? That was your decision?

17 **A.** I don't recall saying that.

18 **Q.** If we could go to Tab 3, the transcript from the July 2019
19 hearing in this case at Page 40.

20 **A.** Which book?

21 **Q.** It is the small binder, Tab 3.

22 **A.** Tab 3.

23 **Q.** Page 40, beginning at Line 2.

24 **A.** What page? Page 40?

25 **Q.** Correct.

1 **A.** Line 2.

2 **Q.** And here you were asked, question: In the November 2018
3 assessment, Fortalice did not look at PCC at all again; right?

4 Do you remember you put that outside of scope?

5 Answer: Yes. It is a different data center.

6 Did I read that correctly?

7 **A.** Yes.

8 **Q.** That was your testimony; right, Mr. Beaver?

9 **A.** Okay.

10 **Q.** Right, Mr. Beaver?

11 **A.** Yes.

12 **Q.** So you put that outside of scope; correct?

13 **A.** When you say put it out of scope, I didn't define it as
14 out. I just defined what was in scope for them for work on,
15 which was our data centers.

16 **Q.** And that did not include PCC?

17 **A.** Did not include the PCC one that you're talking about.

18 **Q.** Now, moving on from 2018, in 2019, the Secretary's office
19 engaged Fortalice to conduct a security assessment of the BMDs
20 which were beginning to roll out; correct?

21 **A.** Yes, we did.

22 **Q.** Now, the security assessment of BMDs, that was conducted
23 under your standard contract with Fortalice?

24 **A.** Was it -- I missed the question.

25 **Q.** That security assessment of the BMDs, that was conducted

1 under your standard contract you had with Fortalice?

2 **A.** Every event that or every activity, we did a separate
3 contract, so that was a separate ask. So if that is what
4 you're asking, yes, we asked them specifically, separately to
5 do that.

6 **Q.** But it fell within your one standard contract that you had
7 with Fortalice; right?

8 **A.** We didn't have just one contract. Every year we had to
9 write another contract.

10 **Q.** Well, you would agree with me there was not a separate
11 contract covering Fortalice's review of the BMDs?

12 **A.** I don't have memory of the contracting for that.

13 **Q.** If you could turn to Page -- sorry, to Tab 13 in your
14 binder.

15 MR. MARTINO-WEINHARDT: Tony, if we could have
16 Exhibit 591 in evidence.

17 THE COURT: I'm sorry.

18 Did you say it was 14?

19 MR. MARTINO-WEINHARDT: 13.

20 THE COURT: 13. Okay.

21 BY MR. MARTINO-WEINHARDT:

22 **Q.** Do you see here this is a State defendants' notice of
23 filing Fortalice contract? Do you see that, Mr. Beaver?

24 **A.** Yes.

25 **Q.** And if you turn to the second page, Paragraph 3, it states

1 there is not a separate contract covering Fortalice's review of
2 the BMDs.

3 **A.** Okay.

4 **Q.** You have no basis to disagree with that; correct?

5 **A.** As I said, I don't recall the contracting around Fortalice
6 for this.

7 **Q.** Right. So you have no basis to disagree that there was
8 not a separate contract covering Fortalice's review of the
9 BMDs; right?

10 **A.** Apparently, it is not.

11 MR. MARTINO-WEINHARDT: If we could bring up Tab 12.
12 BY MR. MARTINO-WEINHARDT:

13 **Q.** If you could turn to Tab 12. This is Plaintiffs'
14 Exhibit 590 in evidence.

15 **A.** Yes.

16 **Q.** And directing your attention to Page 2 towards the bottom
17 where it says from Mike Holland.

18 Do you see that?

19 **A.** Uh-huh (affirmative). Yes.

20 **Q.** So this is an email from Mike Holland sent on Thursday,
21 September 12th, 2019?

22 **A.** Yes.

23 **Q.** Mike Holland worked at Fortalice?

24 **A.** Yes.

25 **Q.** And this email is sent to you, Merritt Beaver, as well as

1 Clark Rainer.

2 Do you see that?

3 **A.** Yes.

4 **Q.** And Clark Rainer, he worked for you at the time; correct?

5 **A.** Yes.

6 **Q.** And it copies Paul Brandau at FortaliceSolutions.com.

7 Do you see that?

8 **A.** Yes.

9 **Q.** So the people on this thread are either individuals at
10 Fortalice or -- as well as you and someone working for you at
11 the IT group at the Secretary's office?

12 **A.** Yes.

13 **Q.** And if you go to the next page, Page 3, it states at the
14 top, the Fortalice team is excited to begin our review of the
15 voting machines now located at SOS GA building in Atlanta?

16 **A.** Yes.

17 **Q.** And I would like you to -- direct you to the bulleted list
18 below that, the fourth major bullet down that says for on-site
19 at SOS GA.

20 And that refers to on-site work at the Secretary of
21 State's office in Atlanta?

22 **A.** Not necessarily, but it would be one of our campuses.

23 **Q.** And the second sub bullet there says on-site work at SOS
24 on Monday and Tuesday, 7 and 8 October; right?

25 **A.** Yes.

1 **Q.** Understand the physical hardware and the voting process
2 with hands-on machines; right?

3 **A.** Yes.

4 **Q.** And consider how bad actors might attack the process or
5 the systems in play for an election and tabulation of results
6 from that election; right?

7 **A.** Yes.

8 **Q.** And below the bulleted list, it says Matt Shirley works
9 for Paul Brandau on our offensive cyber team. Matt is the
10 right person for us to deploy on the review of the machines.
11 He is our best device expert.

12 Do you see that?

13 **A.** Yes.

14 **Q.** So Fortalice was sending their best device expert to
15 determine how bad actors might attack BMDs; right?

16 **A.** That is what it says.

17 **Q.** And part of Fortalice's 2019 assessment of BMDs was
18 essentially a white hat hacker project; right?

19 **A.** I wouldn't necessarily say it was a white hat. We were
20 giving them access. But they did both white hat, they did red
21 hat.

22 So it doesn't state in here what the ground rules were
23 going to be when he did the assessments --

24 **Q.** Part of this --

25 **A.** -- making an assumption saying it is a white hat.

1 **Q.** Part of Fortalice's 2019 assessment of the BMDs was to
2 attempt to hack a BMD; right?
3

4 **A.** Yes, to assess them. Yes.
5

6 **Q.** And if you turn to Page 1 of Exhibit 590, I'm directing
7 your attention to the email at the top.
8

9 **A.** Page 1.
10

11 Yes.
12

13 **Q.** This is an email from you; correct?
14

15 **A.** Yes.
16

17 **Q.** To Mike Holland at Fortalice Solutions?
18

19 **A.** Yes.
20

21 **Q.** And then it copies a number of other people?
22

23 **A.** Yes.
24

25 **Q.** And you wrote, can we get this planning to look at the
voting equipment? Gabe has asked for a specific look at the
iPad-based pollbooks.
26

27 Do you see that?
28

29 **A.** Yes.
30

31 **Q.** And Gabe refers to Gabe Sterling of the Secretary of
State's office?
32

33 **A.** Correct.
34

35 **Q.** So Mr. Sterling had also asked for Fortalice to examine
the iPad-based pollbooks?
36

37 **A.** That is what it says, yes.
38

39 **Q.** So basically to assess the security of the BMDs and the
40

1 system in which they are placed, Fortalice was also going to
2 examine the Poll Pads; right?

3 **A.** It doesn't say anything on here about BMDs. It just says
4 Poll Pads, so I don't know -- you pulled in BMDs in that
5 statement. It doesn't say that, that I see, unless I misread
6 it.

7 So I can say that this asked them to look at Poll Pads.

8 **Q.** But the greater context of this project, as we discussed,
9 was a 2019 assessment of the BMDs; right?

10 **A.** That is what that other document said. This email talks
11 about Poll Pads.

12 **Q.** And this email is following on to the thread with that
13 other email; right?

14 **A.** This was four years ago. I honestly don't know.

15 **Q.** Mr. Beaver, you agree with me on the basics that in 2019,
16 the Secretary of State's office had Fortalice assess the
17 security of BMDs --

18 **A.** Yes.

19 **Q.** -- correct?

20 And one aspect of that assessment was to attempt to hack
21 the BMDs; right?

22 **A.** They were looking for the security risks of the BMD.

23 **Q.** And, sir, in 2019, Fortalice was able to successfully hack
24 a BMD; isn't that right?

25 MR. BOYLE: Objection, Your Honor. We object on the

1 basis of work product. I believe this came up before with 858
2 and it was sustained. We reiterate that objection.

3 THE COURT: I frankly don't know what it was, so if
4 you are wanting to discuss that in camera or you want to come
5 on up here, you can, but I don't recall that one way or the
6 other.

7 MR. CROSS: What exhibit are you talking about?
8 There has not been a work product objection.

9 MR. MILLER: Docket 858 is the --

10 MR. RUSSO: In discovery.

11 MR. MILLER: It is the order that ended up allowing
12 the Fulton County equipment to be reviewed, and the November
13 Fortalice report was also at issue in that order. And the
14 Court says that that -- that is work product.

15 MR. RUSSO: That is 858, Your Honor.

16 MR. CROSS: Your Honor, the -- when Your Honor
17 entered that ruling, you relied on testimony from Mr. Germany
18 where he testified that this was done -- that this assessment
19 was done at his direction.

20 Where is his declaration?

21 And what we've heard now in this case in trial under
22 oath, he doesn't remember this at all because he said he wasn't
23 involved. He said he had nothing to do with this project. We
24 examined him on this. He said it was done for a normal
25 cybersecurity assessment, and it was done by Mr. Beaver at

1 Mr. Beaver's direction.

2 Mr. Beaver has now also confirmed that this was done
3 under the normal contract, a normal cybersecurity assessment.
4 There is absolutely no foundation to treat this as privileged.
5 All the evidence in the record shows that this was a normal
6 cybersecurity assessment that they withheld as privileged but
7 is not privileged. And what Mr. Germany testified under oath
8 is not consistent with what he represented and what Your Honor
9 relied on.

10 THE COURT: Okay.

11 MR. CROSS: And let me just -- I have his
12 declaration. This is at Docket Number 838-5. He says that the
13 Robbins Firm and the Taylor English law firms, their outside
14 counsel, directed him to engage Fortalice in a review of the
15 BMD system and Poll Pads to assess that equipment for the
16 purpose of litigation and allegations of vulnerabilities with
17 that equipment. I then directed other SOS staff to engage
18 Fortalice for that purpose. And he then claims that the report
19 that came out of it is attorney-client privilege.

20 I actually don't even see a work product claim from
21 him here in his declaration. The live testimony under
22 cross-examination directly refutes that, as does Mr. Beaver.
23 What it appears is that he got an assessment that went really
24 poorly for them in 2019, they hid it behind a claim of
25 privilege, and that has now been laid bare. We're entitled to

1 know, was the system hacked, and have they known that since
2 2019?

3 MR. BOYLE: Your Honor, I believe you have already
4 covered this. Mr. Cross referred to Docket 838, and that
5 was -- that was our objection to this request.

6 But then in your order at 858 where you were
7 considering the defendants' work product objection -- I'm
8 looking at Page 3 of your order -- the Court has reviewed the
9 November 27, 2019, report prepared by Fortalice entitled Voting
10 Process Analysis.

11 The State defendants' objection to the production of
12 the Fortalice report --

13 THE COURT: Can you speak a little louder?

14 MR. BOYLE: Yes, ma'am.

15 And the Curling Plaintiffs' notice of authority
16 regarding work product protection based on the information
17 before the Court appears -- as it appears that the Fortalice
18 report falls within the protection afforded by attorney work
19 product doctrine. Although the Secretary of State has an
20 existing contract with Fortalice for the performance of
21 cybersecurity services and has prepared reports that have been
22 produced as evidence in this case previously, the Court cannot
23 find that the analysis of the BMD system undertaken at the
24 direction of counsel in response to plaintiffs' claims would
25 have been prepared in substantially similar form, absent

1 plaintiffs' bringing their challenge to the BMDs in this
2 litigation.

3 THE COURT: Okay. Well, let me look at it when we
4 take a break.

5 MR. BOYLE: All right.

6 THE COURT: I don't think I can do that on the spur
7 of the moment. I didn't know this was an issue.

8 MR. CROSS: Your Honor, the one thing, just briefly,
9 is while he is reading the order, the key language is, based on
10 the information before the Court.

11 THE COURT: I understand your position.

12 MR. CROSS: Thank you, Your Honor.

13 THE COURT: That's why I said I need to look at it.
14 I'm not going to just reflexively rule.

15 Can you move on with other matters, or do you want
16 to --

17 MR. MARTINO-WEINHARDT: Yeah, I can cover other
18 matters.

19 THE COURT: All right. Thank you.

20 MR. MARTINO-WEINHARDT: Thank you, Your Honor.

21 THE COURT: Then when we take a lunch break, I'll
22 look at it.

23 BY MR. MARTINO-WEINHARDT:

24 Q. Mr. Beaver, you're aware that around August of 2019, this
25 Court issued an order in this case preventing further use of

1 DREs in 2020?

2 **A.** I have read that.

3 **Q.** Are you aware that in that order, the Court discussed the
4 three Fortalice reports from 2017 and 2018 we were looking at?

5 **A.** No, I don't know that.

6 **Q.** Sir, after the Court issued its August 2019 order,
7 Fortalice stopped providing reports in writing; correct?

8 **A.** Correct.

9 **Q.** And that's because you directed Fortalice to stop
10 providing written reports?

11 **A.** That's correct.

12 **Q.** Why did you direct Fortalice to stop putting their
13 findings in writing?

14 **A.** I am in charge over it, charged for security for Secretary
15 of State. Whenever we identify that we have a security
16 problem, it is my responsibility to find a way to mitigate it.

17 Because of open records and other types of litigation, our
18 reports were being released to the public, which goes against
19 our security guidelines, and so we had to mitigate.

20 **Q.** Sir, do you recall stating that you directed Fortalice to
21 stop putting their findings in writing because they were being
22 taken out of context by the public?

23 **A.** I don't know. I don't recall saying that.

24 **Q.** If you could turn to Tab 1 in the larger binder, your
25 February 2nd, 2022, deposition, Page 71, beginning on Line 18.

1 You were asked, okay, the cybersecurity assessment for CES
2 that is done annually, is that -- is there a written report of
3 that?

4 Answer: We don't do written reports now.

5 Question: When you say now, when did that -- when did
6 that start?

7 Answer: The last two years.

8 Question: Why are there no written reports of
9 cybersecurity assessments for the Secretary's office as of the
10 last two years?

11 There was an objection.

12 Question: You can answer it. Do you know why?

13 Answer: Yes. They are taken out of context by the
14 public.

15 **A.** Okay. So apparently, I said that.

16 **Q.** Sir, when you refer to the Fortalice reports being taken
17 out of context by the public, were you referring to the Court
18 in this case that enjoined the use of DREs?

19 **A.** It is a general statement. I don't know that I had a
20 specific one in mind.

21 **Q.** Now, after you instructed Fortalice to stop putting their
22 findings in writing, is it your testimony that in 2020, nothing
23 was raised to you coming out of Fortalice's assessment in that
24 year?

25 **A.** I don't know. I don't remember. I would have to look to

1 see what came out of the assessment in 2020. That was COVID
2 year, and it could be that we didn't do an assessment during
3 COVID year. I don't recall.

4 **Q.** If you could turn to Page 80 of your deposition, we can
5 take a look.

6 **A.** Page 81?

7 **Q.** Page 81. Page 81.

8 **A.** Okay.

9 **Q** On Line 2, question: Okay. Do you recall any significant
10 concerns?

11 MR. BOYLE: Objection, Your Honor. Is this
12 impeachment or refreshing recollection? If it is refreshing
13 recollection, he doesn't need to read it into the record.

14 MR. MARTINO-WEINHARDT: This is a bench trial, Your
15 Honor. We have had a little bit of latitude with the procedure
16 in that regard.

17 THE COURT: What are you trying to do? I'm sorry.

18 MR. MARTINO-WEINHARDT: Direct the witness to his
19 testimony about the 2020 assessment done by Fortalice.

20 THE COURT: Do you need to be citing it -- reading it
21 to him, or can you ask him a question?

22 MR. MARTINO-WEINHARDT: I can ask a question, Your
23 Honor.

24 THE COURT: All right. Then if he can't recall, then
25 you can go back.

1 BY MR. MARTINO-WEINHARDT:

2 Q. Mr. Beaver, in 2020 -- let me ask it differently.

3 Is your testimony that in 2020 nothing was raised to you
4 coming out of Fortalice's assessment; correct?

5 A. Is that what it says here?

6 Q. You can take a look.

7 A. What page are you looking at?

8 Q. Page 81, Line 2.

9 A. Okay.

10 Q. Do you see it says, question: Do you recall any
11 significant concerns or any significant findings --

12 A. And my answer was --

13 Q. -- or recommendations coming out of the 2020 assessment?

14 And your answer was, nothing was raised to me; correct?

15 A. That is what it says, and I have no reason to change that.

16 Q. And the same is true in 2021; correct? Nothing was raised
17 to you coming out of the 2021 Fortalice assessment?

18 A. Nothing -- I said nothing was raised to me.

19 Q. So it is your testimony that in 2020 and in 2021, nothing
20 was raised to you coming out of Fortalice's assessments; right?

21 A. That is what I said; correct.

22 Q. Even though in 2017 and 2018 and 2019, Fortalice was
23 conducting assessments and identified over ten vulnerabilities
24 in each of those years; right?

25 A. That doesn't mean there weren't things that came up. This

1 asked me if anything was raised to me. I have staff that deal
2 with security issues. If the issues that came up were things
3 they could solve that didn't need me, it wouldn't be raised to
4 me.

5 You are making a big jump saying that there was nothing
6 assessed. I'm telling you I have staff that handles things for
7 me. So in those two years, nothing reached me that needed my
8 guidance.

9 **Q.** And there is no written reports to reflect Fortalice's
10 findings in those years in 2020 and 2021; correct?

11 **A.** I think we already stated that, yes. Correct.

12 **Q.** All right. Mr. Beaver, do you recall then on a different
13 subject, in 2018, you provided a declaration in this case?

14 **A.** Okay. If there is one here, then the answer would be yes.

15 THE COURT: I'm sorry?

16 BY MR. MARTINO-WEINHARDT:

17 **Q.** If you could turn to Tab 4 in your binder.

18 **A.** The little binder?

19 **Q.** Yes.

20 You see on the cover it says Declaration of Merritt
21 Beaver?

22 **A.** Yes.

23 **Q.** And at the top the stamps indicate this was filed with the
24 court; correct?

25 **A.** Yes.

1 **Q.** And if you flip to the last page of this declaration,
2 Page 4, going by the page numbers on the bottom, that is your
3 signature; correct?

4 **A.** Correct.

5 **Q.** And you executed this under penalty of perjury; right?

6 **A.** Correct.

7 **Q.** And on the previous page, Page 3 of this declaration,
8 directing your attention to about the middle of the page.

9 MR. BOYLE: Your Honor, I object to this line of
10 questioning. If counsel wants to ask Mr. Beaver questions, he
11 can certainly do that. He doesn't get to just read from his
12 declaration.

13 MR. MARTINO-WEINHARDT: I'm getting to the question,
14 Your Honor.

15 THE COURT: All right. Ask the question without --
16 straightforwardly then. If you have to reference the
17 affidavit, okay, but let's ask the question first.

18 BY MR. MARTINO-WEINHARDT:

19 **Q.** Mr. Beaver, in 2018, you declared under oath to the Court
20 that the Secretary of State's office conducted regular cyber
21 assessments with penetration testing; right?

22 **A.** Yes, I did.

23 **Q.** But you omitted the fact that Fortalice had actually
24 successfully obtained full administrator access through their
25 penetration testing; right?

1 **A.** Is that what this one says?

2 I don't know what year that happened. I know one year
3 they were able to do penetration testing and were able to
4 access some of our systems.

5 **Q.** And that wasn't referenced in your declaration to the
6 Court in 2018, was it?

7 **A.** That wasn't, you are asking?

8 **Q.** Correct.

9 **A.** I don't know. When you say, that wasn't, it doesn't look
10 like -- if it is not in here, then it isn't.

11 **Q.** Right. So you don't disagree that in your declaration to
12 the Court in 2018, you referenced penetration testing but not
13 the fact that, in fact, the penetration testing had been
14 successful; right?

15 **A.** I don't think we got into a discussion about it. We just
16 said we did penetration testing. We do lots of different kinds
17 of testing. I'm confused with your -- is there -- what is the
18 question?

19 **Q.** I can ask you another question.

20 MR. MARTINO-WEINHARDT: Tony, actually, if we can go
21 to Exhibit 18 at Page 42.

22 BY MR. MARTINO-WEINHARDT:

23 **Q.** This is the October 2017 Fortalice report again.

24 **A.** What tab?

25 **Q.** That is at Tab 8, just so we can be specific what we're

1 talking about.

2 **A.** 18 -- 18 of 69?

3 **Q.** That's Exhibit 18, Page 42.

4 **A.** Yes.

5 **Q.** October 2017, Fortalice successfully obtained domain
6 administrator rights on the GA SOS network; right?

7 **A.** Yes.

8 **Q.** They were able to identify sensitive data; correct?

9 **A.** I don't know that it says that.

10 **Q.** The Cloudburst Security team used the obtained credentials
11 to identify sensitive data.

12 That is what it says in this report; right?

13 **A.** I didn't see that on there. This is an old, old report,
14 so I don't recall the words.

15 **Q.** Fortalice, in October 2017, was able to gain access to
16 network security systems; correct?

17 **A.** That is what it says.

18 **Q.** And Fortalice was able to review the enterprise
19 architecture and system configurations; correct?

20 **A.** That is what it says.

21 **Q.** In July 2019 --

22 **A.** Is there a question for this?

23 We seem to be reading documents rather than asking
24 questions.

25 THE COURT: I appreciate your concern, but I think

1 that is an objection your counsel has to make and he has made,
2 actually, so just be sure that you are asking a question.

3 MR. MARTINO-WEINHARDT: Certainly, Your Honor.

4 THE COURT: But I instruct the witness it is not for
5 you to be objecting on behalf of your counsel who has properly
6 made an objection before.

7 BY MR. MARTINO-WEINHARDT:

8 **Q.** Mr. Beaver, in July 2019, you again provided a declaration
9 to the Court in which you refer to penetration testing but
10 omitted the fact that, in fact, Fortalice had successfully
11 penetrated the Secretary of State's network; correct?

12 **A.** I don't think in 2019 they were successful.

13 **Q.** In 2019, you again referenced penetration testing in a
14 declaration to the Court, but had left out that at any point
15 Fortalice had successfully penetrated the Secretary of State's
16 system; correct?

17 **A.** As I said, we were referencing 2019. We don't go back and
18 talk about history of what we did years and years ago.
19 Technology changes, so something that you could do two or
20 three years ago, you fixed, and you can't do it anymore.

21 So we don't report old history. When we do assessments,
22 we're looking at today. What's our issues today?

23 **Q.** So you never referenced successful penetration to the
24 Court because that was old history; is that right?

25 **A.** No, that is not true. We didn't reference it because it

1 wasn't context of what the declaration was about.

2 MR. MARTINO-WEINHARDT: No further questions at this
3 time.

4 THE COURT: I'm going to -- I'm putting a pin in your
5 examination regarding the issue of -- the attorney-client
6 privilege was previously asserted on, so assuming you can ask
7 the questions if I rule in your favor, and if not, then you're
8 done with that.

9 MR. MARTINO-WEINHARDT: Understood, Your Honor.

10 | Thank you.

CROSS-EXAMINATION

12 BY MR. BROWN:

13 Q. Mr. Beaver, my name is Bruce Brown. I represent the
14 Coalition plaintiffs.

15 Are you aware that on or about February 26, 2021, just
16 several weeks after the breaches in Coffee County, Fortalice
17 sent the Secretary of State a security incident analysis tool?

18 **A.** I am not -- I don't recall that. I wouldn't be surprised
19 if that happened, but I don't recall it. That was 2021.

20 Q. Do you recall Fortalice ever sending your office a
21 security incident analysis tool?

22 A. I couldn't swear to it.

23 Q. Do you recall that happening?

24 **A.** No, I don't recall it. It doesn't mean it didn't happen.
25 I just don't recall it.

1 **Q.** Do you know what might have prompted the Secretary of
2 State to request Fortalice to send the Secretary of State a
3 security incident analysis tool in February 2021?

4 **A.** I would have needed to know the context that would have
5 driven that.

6 **Q.** The context is it was three weeks after the Coffee County
7 breach.

8 **A.** Okay.

9 MR. BOYLE: Your Honor, I object to these questions
10 as assuming facts not in evidence.

11 THE WITNESS: Yeah. I can't comment because I don't
12 recall.

13 THE COURT: Well, I think that the questions are --
14 the fact is a breach did occur then, and that is an adequate --
15 and I don't think anyone has actually now -- whether or not the
16 Secretary of State's office acknowledges that it did or didn't
17 know about it at that time is a different issue. But -- but in
18 reality, there was a breach at that time. There is a
19 prosecution going on about that time. There is endless
20 depositions in this case about that. So I don't -- I think
21 that the question is appropriate.

22 And I'm sorry to have interrupted the flow, so you
23 can ask the question again.

24 MR. BROWN: Thank you, Your Honor.

25

1 BY MR. BROWN:

2 Q. Mr. Beaver, the context of the question -- let me back up
3 a little bit.

4 Are you aware that the Secretary of State's lawyers in
5 this case have refused to produce a .bat file? Do you know
6 what a .bat file is?

7 A. Yes.

8 Q. And what is it?

9 A. A .bat file is basically a file that defines the structure
10 of a hard drive.

11 Q. And a .bat file is one that is a description of the file
12 "dot" B-A-T; correct?

13 A. (Witness nods head affirmatively.) Oh, that was what
14 you're talking about. Okay. Yeah. Now I know what you are
15 talking about, yes.

16 Q. What is that type of file?

17 A. That is typically a text-type file that inside of it you
18 can script something to run on the computer if you run the .bat
19 file.

20 Q. Sometimes for repetitive tasks --

21 A. Yes.

22 Q. -- correct?

23 Are you aware that on February 26, 2001 [sic], that
24 Fortalice sent to the Secretary of State a tool that is used to
25 triage an incident for security purposes? Do you recall that?

1 **A.** No.

2 **Q.** You don't recall anything about that?

3 **A.** It might have happened, but I -- as I said, it is so long
4 ago, I don't know the details of what happened then.

5 MR. CROSS: Bruce, you said 2001.

6 MR. BROWN: I meant 2021.

7 BY MR. BROWN:

8 **Q.** Do you recall Fortalice sending the Secretary of State a
9 tool in a .bat file?

10 **A.** I don't. It could have happened, as I said, but I don't
11 recall it.

12 **Q.** Do you recall your office ever using a security incident
13 analysis tool that you received from Fortalice?

14 **A.** I don't -- I could not say that I recall that.

15 **Q.** You could not say?

16 **A.** No. It may have happened, but I don't have recollection
17 of any details about it.

18 **Q.** How about generally?

19 **A.** If we needed something like that, we might have gone to
20 Fortalice to help us. They did that kind of work for us.

21 But specifically this, I have no recollection of it
22 happening, so I couldn't honestly speak to it.

23 MR. BROWN: May I approach, Your Honor?

24 THE COURT: Yep. Yes. Excuse me.

25 MR. BROWN: Let me hand to you what has been marked

1 as Curling 127.

2 BY MR. BROWN:

3 **Q.** For the record, Curling Exhibit 127 is a multipage
4 document. The first page of it is entitled Fortalice Solutions
5 Incident Response: Evidence Collection Process Windows
6 Operating Systems dated February 26, 2021.

7 Do you see that?

8 **A.** Yes.

9 **Q.** Have you seen that document before?

10 **A.** No.

11 **Q.** Did Fortalice send this to you, to the best of your
12 knowledge, or to your office?

13 **A.** To the best of my knowledge, no.

14 **Q.** Pardon me?

15 **A.** To the best of my knowledge, no. I don't remember this
16 document.

17 **Q.** Do you recall this document accompanying --

18 **A.** I don't have any -- any knowledge of this document that I
19 remember.

20 I believe you said this is Coffee County?

21 **Q.** I did not. I was asking you if you recognize this
22 document.

23 **A.** No. This is about Coffee County?

24 **Q.** I did not say that.

25 Was it?

1 **A.** Oh, I don't know. I thought that is what I heard you say.

2 **Q.** Why did you think about Coffee County?

3 **A.** Because I thought you just said Coffee County.

4 **Q.** Okay. Mr. Beaver, when was the first that you learned of

5 the breaches to the Coffee County election equipment in January

6 of 2021?

7 **A.** So Secretary of State's CIO -- that is me -- does not

8 manage county infrastructure.

9 **Q.** That is interesting, but not remotely responsive.

10 Will you answer my question?

11 **A.** So it was nobody --

12 **Q.** I asked you when.

13 **A.** I have no recollection when I would have heard about it.

14 **Q.** You don't know -- so it could have been February 26, 2021?

15 **A.** I don't even know that I could tell you anything about it.

16 **Q.** So --

17 **A.** I don't recall the event.

18 **Q.** Did you ever learn about the event?

19 **A.** As I said, I do not recall anything about the event

20 that -- whatever the event is that you're talking about.

21 **Q.** So no one informed you as the chief information officer of

22 the Secretary of State about --

23 **A.** If the --

24 **Q.** -- about the breaches in Coffee County ever?

25 **A.** It was never raised to my attention to do something about

1 it. It may have come up in a conversation because it was on
2 some news feed. But as the Secretary of State's CIO, it does
3 not fall under my responsibility, so I would not have been
4 involved.

5 MR. BROWN: No further questions. Well, let me
6 check -- Your Honor, let me check with my --

7 THE COURT: Were you trying to bring 127?

8 MR. BROWN: Your Honor, 127 was produced by
9 Fortalice.

10 THE COURT: Right. And are you trying to introduce
11 it but just not through this witness because he says he doesn't
12 recall it?

13 MR. BROWN: He can't authenticate -- he says --

14 THE COURT: So you are going to do it later on; is
15 that right?

16 MR. BROWN: Yes, Your Honor. Thank you.

17 (There was a brief pause in the proceedings.)

18 MR. BROWN: Just one more -- one and a half or two
19 more questions.

20 BY MR. BROWN:

21 Q. Did you ever communicate with Fortalice about the Coffee
22 County breaches?

23 **A.** No, not to my recollection.

24 MR. BOYLE: I just have a few questions if it is my
25 turn, Your Honor.

1 THE COURT: Yes.

2 DIRECT EXAMINATION

3 BY MR. BOYLE:

4 Q. Mr. Beaver, good afternoon.

5 A. Good afternoon.

6 Q. You were asked about networks in the Secretary of State's
7 office that interact with Georgia's election networks.

8 Do you recall those questions from plaintiffs' counsel?

9 A. Correct.

10 Q. All right. Does every network in the Secretary of State's
11 office interact with election-specific networks?

12 A. No. We do have some dedicated networks that are just for
13 election use, but the vast majority are a common network.

14 Q. You were asked about PCC in the voter registration
15 database.

16 Do you recall those questions?

17 A. Yes.

18 Q. Is PCC still involved in the operation of the voter
19 registration database?

20 A. No, they are not.

21 Q. What company fulfills that function now?

22 A. Well, it is -- MTX wrote the application, and it runs on
23 top of a Salesforce platform.

24 Q. Okay. Is Fortalice still a vendor for cybersecurity at
25 the Secretary's office?

1 | A. No, it is not.

2 Q. What vendor does the State rely on now for security of
3 Dominion voting machines?

A. Before the Breach.

5 Q. Now, what vendor does the State rely on for security of
6 Dominion voting machines?

7 **A.** When you say vendor -- well, Dominion -- restate that
8 question, please.

9 Q. Okay. Does the State itself take care of security of the
10 Dominion voting machines or rely on someone else?

11 | **A.** I thought that is what you were trying to ask. No.

12 Q. And on whom does the State rely?

13 **A.** That falls on Dominion. We have vended that out to
14 Dominion.

15 MR. BOYLE: Thank you.

16 THE COURT: I'm sorry.

17 Is this rebuttal?

18 MR. OLES: Judge, counsel got up before I had an
19 opportunity to --

20 THE COURT: Well, if you're going to want to ask
21 questions in the future, you've got to be faster.

22 MR. OLES: Yes --

23 THE COURT: I'll let you do this, but let me ask you
24 a few questions first.

25 EXAMINATION

1 BY THE COURT:

2 **Q.** When did you stop using Fortalice for review of your
3 security systems?

4 **A.** I don't have the exact date, but it was sometime, I think,
5 '20 or '21. It might have been '22, but it was in that window.

6 **Q.** And was there a reason at that time for the termination?

7 **A.** They decided they were going to go work with other
8 companies.

9 **Q.** Are you able to ascertain that and provide that
10 information?

11 I realize you are no longer with the Secretary of State's
12 office, but I would appreciate if I could get an actual date
13 from the State -- State's counsel then.

14 MR. BOYLE: Yes, Your Honor.

15 BY THE COURT:

16 **Q.** If you were there still, I would get you to go call up,
17 but you're not.

18 What was your last date of employment with the Secretary
19 of State's office as CIO?

20 **A.** December 31st.

21 **Q.** Of '23?

22 **A.** '23.

23 **Q.** That is what I thought.

24 But -- and as I understand it, you were working at least
25 some period of time in two capacities, one as the chief

1 information officer for the Secretary of State's office and one
2 for a different agency in the State?

3 **A.** That's correct.

4 **Q.** And which agency was that?

5 **A.** The Insurance Commission.

6 **Q.** And when did you start having that double role?

7 **A.** 19 -- I think November of '19.

8 **Q.** So was it half time for one and half time for the other?

9 **A.** It is called fractional. So fractional, basically, I work
10 part-time for each. I would balance my load as to based on
11 what I needed, but there was never a time that was set as to
12 how much was needed on one or the other. Both parties agreed
13 that they were okay with me working -- especially since they
14 were one floor apart, I could run meetings one hour and be in
15 the other the next hour. It was all time management.

16 **Q.** Who was your second in command as head of -- as chief
17 information officer for the Secretary of State's office?

18 **A.** During what period?

19 **Q.** Well, let's say '20 -- when we --

20 **A.** Two, Jason Matthews and Richard Lysinger -- well, actually
21 had three. And Kevin Fitts.

22 **Q.** And did they stay all the way up until 2023?

23 **A.** They are still there. Oh, well, Jason Matthews isn't
24 there anymore.

25 **Q.** And was one of them in particular working with the

1 election system?

2 **A.** We -- I divide up my organization by need. So I have
3 technology group, which Jason Matthews did; I have projects,
4 which is Richard Lysinger; and security, which is Kevin Fitts.

5 **Q.** Is Mr. --

6 **A.** They cover all Secretary of State, not just elections.

7 **Q.** Right. So was Mr. -- has Mr. Fitts been the one primarily
8 responsible for security issues with the Dominion system?

9 **A.** Prior to him, it was David Hamilton.

10 **Q.** Okay.

11 **A.** David dealt with much of what is going on here.

12 **Q.** And when did Mr. Hamilton leave?

13 **A.** It has been at least two years.

14 **Q.** But Mr. Hamilton then would have been the one dealing with
15 this in 2021; is that right?

16 **A.** Yes.

17 **Q.** And '22 as well?

18 **A.** He may have left by '22. I think he was gone sometime --
19 it might have been in '22 that he left.

20 **Q.** Sometime in '22?

21 **A.** I would have to go look.

22 THE COURT: Counsel, you wanted to ask a few
23 questions?

24 MR. OLES: Yes, Judge.

25 THE COURT: All right. Go ahead.

CROSS-EXAMINATION

2 | BY MR. OLES:

3 **Q.** Good morning, Mr. Beaver. I represent Ricardo Davis in
4 the case. I have just a couple of questions for you, and I
5 just want to get one thing clear in my mind.

6 You were testifying -- you are -- it is my understanding
7 you are in charge of cybersecurity for both the Secretary of
8 State's office and for the election system?

A. So elections falls under Secretary of State.

10 | Q. Okay.

11 **A.** And I am the CIO for the Secretary of State.

12 | Q. Okay.

13 **A.** Election system is a big term. There are numerous systems
14 in elections. I do not manage all of them.

15 Q. Are you familiar with Dr. Halderman's report that was
16 issued in this case that you're here today for?

17 A. I am familiar with it.

18 Q. All right. And have you personally reviewed it?

19 A. I have looked at parts of it.

20 Q. Okay. Would you -- you would generally agree with the
21 statement then that -- that any election system should be
22 developed with sufficient intention to security during design,
23 software engineering, and testing? Do you agree with that
24 statement?

A. That is a pretty general statement that anybody doing

1 software would say is true.

2 **Q.** Okay. Is that a yes?

3 **A.** That would be a yes.

4 **Q.** Okay. Would you also agree with the statement that says
5 it would be -- with respect to the Dominion election system, it
6 would be extremely difficult to retrofit security into a system
7 that was not initially produced with such a process?

8 MR. BOYLE: Your Honor, I object. The Halderman
9 report is not in evidence. It is improper for counsel to be
10 reading from it to the witness.

11 THE COURT: How much of this are you going to pursue?
12 Because, obviously, the -- Dr. Halderman is the Curling
13 Plaintiffs' expert, and they chose -- and to the extent that
14 they chose not to ask this witness about the report, I mean, it
15 seems to me also a little bit strange for you to pursue it.

16 So, I mean, I understand you want the -- I'm not sure
17 whether he agrees or not. Doesn't agree makes a difference at
18 the moment. So if there is one thing that you want to ask him
19 about from the report more, go ahead and then we're going to
20 move on.

21 MR. OLES: Well, that literally is my only question
22 that would be -- at least derived from --

23 THE COURT: You asked the other one?

24 MR. OLES: Yes, the one that I just --

25 THE COURT: All right. That's fine.

1 BY MR. OLES:

2 Q. So let me repeat.

3 With respect to the Dominion system, would you agree with
4 the statement that says it would be extremely difficult to
5 retrofit security into a system that was not initially produced
6 with such a process?

7 A. I would disagree.

8 Q. Would you agree that it is important to communicate with
9 the application stakeholders within the Secretary of State's
10 office in regards to integrating cybersecurity within their
11 various Secretary of State applications?

12 THE COURT: All right. Now, both Curling counsel
13 and -- both Curling counsel and the State's counsel have stood.

14 State your objections and then --

15 MR. BOYLE: I renew my objection again. Counsel
16 didn't explicitly say he is still quoting, but he appears to
17 still be quoting from the Halderman report. For the same
18 reason, I object.

19 MR. CROSS: Yeah, I have a different objection, Your
20 Honor, which is this witness is not an expert, and we didn't
21 ask these questions because we don't want to back door for
22 expert testimony whether he agrees or disagrees.

23 THE COURT: I sustain the objection. I sustain the
24 objections.

25 Move on, Counsel.

1 BY MR. OLES:

2 Q. Previously in the case, Mr. Barnes testified that he had
3 no interaction with you in regards to cyber -- to cybersecurity
4 aspects of Georgia's election system.

5 To your mind, is that a correct statement?

6 A. Once again, I'm going to ask you to be specific.

7 When you say, the election system, what part of the
8 election system are you talking about?

9 Q. Well, let's start with the easy.

10 Did you -- would that be a correct statement with regard
11 to any aspect of the election system?

12 A. So the system is made up of many pieces. My purview
13 covers some of them.

14 Q. Okay.

15 THE COURT: And what were the ones that your purview
16 covers?

17 THE WITNESS: Voter registration, election night
18 reporting, the -- the technical environment -- technology
19 environment for CES. Those are the main ones.

20 BY MR. OLES:

21 Q. You are familiar with Mr. Barnes' role within the
22 Secretary of State's office?

23 A. Very.

24 Q. In your experience, does he have some responsibility for
25 cybersecurity within the realm of the systems that he works

1 with?

2 **A.** I would say no.

3 **Q.** Would you agree that it is important, as far as
4 cybersecurity for the Secretary of State in Georgia's voting
5 systems, to monitor cyber issues that have been created or
6 presented in other states concerning the Dominion Democracy
7 Suite system?

8 **A.** I can't speak to the Dominion system. I have already said
9 that. We outsource the security for the Dominion system to
10 Dominion.

11 **Q.** So my question, sir, was, would you agree -- let me try to
12 rephrase it.

13 Are you saying that you had no responsibility for the
14 cybersecurity for the Dominion voting system?

15 **A.** We have outsourced that to them. I do not have
16 responsibility for county equipment. Dominion is county
17 equipment.

18 **Q.** And who have you outsourced that to?

19 **A.** Dominion.

20 THE COURT: And when did that occur?

21 THE WITNESS: When we bought it.

22 THE COURT: All right. So it was from the start --

23 THE WITNESS: That was day one.

24 THE COURT: -- as to county equipment, but what about
25 anything that was provided via the State?

1 THE WITNESS: That has still been turned over to
2 counties. So State bought it and turned it over to them, and
3 they are responsible for maintaining the equipment.

4 THE COURT: I understand they are -- the equipment
5 that they are in possession of, but to the extent that there is
6 software that is supplied by the State and there is interface
7 between the State and the software and the counties, who is
8 responsible?

9 You are saying that counties are delegated
10 responsibility for dealing with the State's --

11 THE WITNESS: When you say software, are you talking
12 about the software for the BMDs, the software for the printers,
13 or the ballots that get put on them?

14 THE COURT: All right. I'm not going to be the one
15 examining this. If either of one --

16 THE WITNESS: It is very different.

17 THE COURT: I guess I'm somewhat surprised by the
18 answer, so we'll let counsel pursue this after lunch.

19 But I think, Mr. Oles, others might be better suited
20 to be able to follow up on that than you.

21 But go ahead. Finish your questions.

22 MR. OLES: Okay.

23 BY MR. OLES:

24 Q. Did Dominion -- was Dominion then required to report to
25 you with regard to anything regarding the cybersecurity of its

1 electronic voting systems?

2 **A.** Dominion did not report to me.

3 **Q.** Did they report to anyone within the Secretary of State
4 with regard to cybersecurity on their voting systems?

5 **A.** I can't speak to that.

6 **Q.** Is that because you don't know, or you're not permitted?

7 **A.** I don't know. It is a contract with Dominion.

8 **Q.** Is it fair to say then that you never inquired as to
9 whether or not there were any cybersecurity incidents with
10 regard to their equipment?

11 **A.** I have never gotten into or involved with any of the
12 Dominion hardware or software.

13 **Q.** Do you have an understanding then of who would have been?

14 **A.** I can't speak to that.

15 **Q.** Okay. Again, is that because you don't know?

16 **A.** I don't know. If I said so, it may not be right.

17 **Q.** Okay. Okay. I only say that because --

18 **A.** I can only speculate, so I can't -- I'm not going to say.

19 **Q.** I only say that because I find it a remarkable statement
20 that you as the head of -- as the CIO and head of cybersecurity
21 are now telling this Court that you didn't have any
22 responsibility over Dominion for the cybersecurity of the
23 voting system that is implemented throughout the State of
24 Georgia.

25 **A.** I'm the CIO for the Secretary of State's IT environment.

1 **Q.** So would it -- would it be fair to say then that you have
2 not monitored -- you have not undertaken to monitor any
3 cybersecurity weaknesses or events or intrusions that may have
4 occurred in any other state with regard to the Dominion system?

5 THE COURT: Any other state or any other --

6 MR. OLES: Any other state.

7 THE WITNESS: I only manage the Secretary of State's
8 IT environment. Dominion does not fall in that.

9 BY MR. OLES:

10 **Q.** Okay. So the answer to my question would have been, no,
11 you did not?

12 **A.** I don't deal with other states, either.

13 **Q.** Okay. To your knowledge, is there anyone else in the
14 Secretary of State's office that would have that kind of
15 knowledge?

16 **A.** I can't speak to that.

17 **Q.** And then, Mr. Beaver, is there anyone else in the
18 Secretary of State's office that has greater authority than you
19 for cybersecurity on the electronic voting systems?

20 **A.** I report to Gabe Sterling.

21 **Q.** So --

22 **A.** And so for Secretary of State's IT environment, I own
23 that.

24 **Q.** All right. So is it your testimony then that Mr. Sterling
25 would be responsible for the cybersecurity?

A. I can only speak to my job description.

2 | Q. Okay.

3 MR. OLES: I have no further questions, Judge.

4 THE COURT: All right. I know we got fragmented, but
5 was there anything you wanted to ask based on Mr. Oles'
6 questions?

7 MR. BOYLE: Yes. Just one follow-up question or two.

8 THE COURT: And then we'll have the -- we'll deal
9 with the other matter that -- after lunch.

10 | REDIRECT EXAMINATION

11 BY MR. BOYLE:

12 Q. Mr. Beaver, does the State have a current cybersecurity
13 vendor?

14 | A. Yes.

15 You say the State.

16 Q. The Secretary of State.

A. The Secretary of State have a vendor that --

18 Q. For cybersecurity.

19 A. For doing assessments?

20 Q. Yes, sir.

21 A. Yes.

22 Q. And who is that?

A. Before the Breach.

24 Q. Okay. Thank you.

25

25 | REEXAMINATION

1 BY THE COURT:

2 **Q** So when was Before the Breach hired?

3 **A** I think it is two years now. It would have been probably
4 sometime in '22.

5 **Q** And what is the scope of their responsibility?

6 **A** They do cyber assessments of our systems that fall under
7 the Secretary of State's IT department. So that's
8 Corporations, Elections, Professional Licensing, Securities,
9 and all infrastructure, which includes our two data centers and
10 all of our campuses.

11 **Q** So did they take over -- did you contract with Before the
12 Breach when you stopped -- ceased your contract with Fortalice?

13 **A** Yes.

14 **Q** And did they have the same scope of responsibility?

15 **A** Yes.

16 **Q** Did they have any responsibility for the sorts of
17 cybersecurity issues arising in the actual operation of the
18 election system and the software, the reliability and integrity
19 and security?

20 **A** Are you talking about the Dominion system?

21 **Q** That's right.

22 **A** I am not aware of that. That doesn't mean they haven't
23 been contracted outside of my aware, but I have not contracted
24 them to do that.

25 THE COURT: All right. Any questions because of

1 mine?

2 MR. MARTINO-WEINHARDT: Very briefly, Your Honor.

3 RECROSS-EXAMINATION

4 BY MR. MARTINO-WEINHARDT:

5 Q. Mr. Beaver, the vendor you hired to replace Fortalice is
6 called Before the Breach?

7 A. Yes.

8 Q. And you hired Before the Breach after the breach in Coffee
9 County?

10 A. I don't know. As I said before, I am not familiar with
11 Coffee County other than rumors, so I can't speak to when it
12 happened or what happened there. It was strictly rumors, so I
13 can't really talk about it.

14 Not that I don't want to. I just can't.

15 MR. MARTINO-WEINHARDT: Nothing further, Your Honor.

16 THE COURT: All right. Annie, do you have the
17 exhibit numbers that we're going to look at?

18 All right.

19 MR. BROWN: Your Honor, if I may, I would like to get
20 into evidence the document that I was referring to in my
21 examination where the defendants' counsel raised the tool as a
22 state secret, and I would like to just mark that.

23 THE COURT: All right. Go ahead and have it marked.

24 I have that; is that right? What was the number?

25 MR. BROWN: It is Document Number 1229-3 in this

1 case, and the reference is to Page 4 of 10.

2 THE COURT: And was it -- it was a tab, though, in
3 the Curling Plaintiffs' --

4 MR. BROWN: No, it was not identified.

5 THE COURT: Right. So do I have it or not?

6 MR. BROWN: You do not.

7 THE COURT: Fine. Send it up then.

8 MR. BROWN: I would like to mark this as the next
9 exhibit, which would be Coalition 61.

10 Your Honor, the reference to the Fortalice tool is on
11 Page 4. It is about two-thirds of the way down, and it is
12 withheld on the basis of a state secret privilege. And we
13 would introduce that into evidence. It is a document that was
14 prepared and filed by the defendants.

15 Thank you, Your Honor.

16 THE COURT: Do you have any objections?

17 MR. TYSON: Your Honor, I'm sorry. We're trying to
18 figure out where this document came from, if you can just give
19 us a minute.

20 THE COURT: All right. I'm going to have to have eye
21 surgery.

22 If you have an electronic version of this -- and I do
23 recall this document. But could you send it to Mr. Martin for
24 us so that I can enlarge the cells and look at them?

25 MR. BROWN: Yes, Your Honor.

1 THE COURT: I do recall the document, though.

2 MR. TYSON: So, Your Honor, this document appears to
3 have been attached to a discovery dispute about discovery from
4 Fortalice. I'm not sure we have anybody that can authenticate
5 that this is, in fact, Fortalice's privilege log here.

6 THE COURT: I thought the State supplied it, frankly.

7 MR. CROSS: I thought they prepared that.

8 Is that not right, Bryan?

9 MR. TYSON: This is the first time I have looked at
10 this in a couple of years.

11 THE COURT: Why don't we look at it over lunch.
12 Everyone look at it, I'll look at it, and we'll see whether we
13 can expand the cells ourselves since it is on the docket.

14 MR. BROWN: Thank you, Your Honor.

15 THE COURT: All right. Sir, please don't discuss
16 your testimony with anyone substantively. It doesn't mean you
17 can't have lunch with your counsel, though.

18 And we're going to start -- let me see. Since it is
19 12:30, I'm going to just take an extra five minutes because of
20 things we have to look at.

21 So let's see you in 50 minutes, which is 20 after
22 1:00.

23 Is that right? No, that's -- no, 1:20.

24 COURTROOM SECURITY OFFICER: All rise. Court is in
25 recess until 1:20.

(A lunch break was taken.)

2 THE COURT: Very slow on my homework. My apologies.

3 | Have a seat.

4 All right. So we had a -- a number of outstanding
5 little items -- little or big. One is to Mr. Persinger. I
6 think that there is an essential need for the plaintiffs'
7 counsel to be able to understand his note-taking, especially in
8 the context of the confidentiality agreement and protocol as to
9 taking notes. So whenever it is -- counsel agree that you want
10 to have an ex parte hearing, we will do that.

11 I've had also enlarged the pages on the document log
12 regarding the Fortalice triage that Mr. Brown was asking about.
13 So when you are ready to ask that question -- want to go back,
14 return to that, we can do that. That is that one, the
15 unreadable one.

16 And our quick review of what Mr. Germany said, we
17 might not have caught all the pages in his testimony. They
18 were on Pages 84 through 87.

19 Was there something else that you were wanting us to
20 look at when you relied on saying, based on his testimony and
21 probably something else, you thought it was appropriate for me
22 to revisit the prior ruling about the confidentiality of the
23 Fortalice review of the -- of their specially contracted review
24 of the voting equipment in 2019?

25 MR. CROSS: We flagged the same pages, Your Honor, 84

1 and 87.

2 THE COURT: Thank you.

3 When you are through with your examination -- and I
4 don't know if you are -- I'll have a few more questions of the
5 witness before I make a decision on -- as to the report and
6 whether I should lift or modify the seal on it.

7 Where were we with Mr. Beaver?

8 MR. MARTINO-WEINHARDT: Sorry, Your Honor. No other
9 questions for Mr. Beaver from me other than about that report.

10 THE COURT: All right. And was there anything more
11 you wanted, Mr. Brown, to ask him in connection with the tiny
12 print one?

13 I have enlarged it in case he needs to see it.

14 MR. BROWN: Yes, Your Honor.

15 THE COURT: But this one says -- is classified. The
16 privilege is classified as state secret. On February 26, 2021,
17 FortaliceTriage.bat. And it says, file used by Fortalice for
18 data triage withheld on state secret grounds text.

19 That is just for the record because I think the tiny
20 print is a little bit hard to understand.

21 MR. BROWN: Thank you, Your Honor.

22 RECROSS-EXAMINATION

23 BY MR. BROWN:

24 Q. That is in reference to the document that we had marked
25 but it has not been admitted as Coalition Plaintiffs'

1 Number 61.

2 And let me just ask you, Mr. Beaver: Are you aware of any
3 kind of tool that fits that description coming from Fortalice
4 while you were the CIO?

5 **A.** No.

6 **Q.** And do you know who in your -- if you were conducting
7 discovery of this, who might -- from your office might have
8 requisitioned that tool?

9 **A.** It could have been -- what year was this?

10 **Q.** 2021. February 26, 2021.

11 **A.** I think David Hamilton was there.

12 **Q.** Okay.

13 **A.** He might have asked -- somebody from the elections
14 department may have since it was -- it sounds like it was a
15 county question, and our group typically doesn't deal with
16 county issues.

17 **Q.** What makes you -- sorry. Go ahead.

18 **A.** So it could have been somebody from the elections
19 department that dealt with the counties that knew that we had a
20 vendor that helps us, could have made the request. I can only
21 speculate.

22 **Q.** Right. I'm not suggesting there would have been anything
23 wrong with this.

24 But did you learn anything in the break about the
25 providence or the disposition of that tool?

1 **A.** We didn't talk about anything that was involved in here
2 other than weather.

3 **Q.** Fair enough.

4 Now, do you recall any counties asking the Secretary of
5 State to obtain this kind of tool on or about February 2021?

6 **A.** No, I do not.

7 MR. BROWN: Your Honor, I would move to admit
8 Exhibit 61 on the following grounds --

9 THE COURT: Could I see it again, unless I
10 confiscated it? Thank you.

11 Yes, I have this, the Exhibit 3. I just wondered,
12 didn't we have an instrument? I don't -- no?

13 MR. BROWN: No.

14 THE COURT: Okay.

15 MR. BROWN: We don't have the actual artifact, Your
16 Honor. The basis for its admissibility is the following: It
17 was filed by the defendants in this case and is on the docket;
18 therefore, it is authentic because the defendants will tell you
19 that they would never have filed a document that was
20 inauthentic. So it is authentic.

21 It is highly -- it is relevant because it shows that
22 the State received from Fortalice in February '21 something
23 that is described by Fortalice as being a tool, and therefore
24 it is relevant.

25 In terms of -- since we're not using the witness to get

1 that document in, we're getting it in because it is a fact in
2 the case. It was a document that was provided in the case. It
3 may not be necessary technically, Your Honor, to have it
4 introduced in evidence in light of the fact that the State has
5 filed it of record, but we would like to tender it in evidence
6 as an exhibit nonetheless.

7 THE COURT: You want to introduce the description of
8 it as a document, Fortalice for data -- for data triage that
9 has been classified by counsel as state secret because you
10 think its very existence then, which we don't have the content
11 of it at this moment, would be relevant?

12 MR. BROWN: Yes, Your Honor. What it does and who
13 used it would be additional information that would be relevant,
14 but that is not established by the document, nor would that be
15 the subject of what we are moving to admit.

16 MR. BOYLE: Your Honor, we object. The witness has
17 said he knows nothing about the document. It is a Fortalice
18 document. Both sides agree with that.

19 THE COURT: You're just going to have to talk up
20 routinely. I'm sorry.

21 MR. BOYLE: Okay. Sure. It is a Fortalice document.
22 Both sides agree with that. I don't think there is any
23 question about that.

24 Just because it is on the docket doesn't mean it is
25 admissible in the case. I mean, if the Court can take notice,

1 we're up to 1,700-some entries, not counting subentries in the
2 case. Surely not everything that is on the docket comes into
3 evidence in the case. That is not enough.

4 THE COURT: Well, that is not -- we're not having
5 everything. It is saying that it is being withheld on state
6 secret grounds, and it is -- there is the -- there is an
7 inference here that it is related in some vital way to the
8 election system or its operation or the security issues, or
9 else it wouldn't have been classified a state secret.

10 So I don't know that it is actually -- has any --
11 bears any weight, but I'm reluctant to not allow just the
12 description of it. I don't think I can draw any inferences at
13 this moment, but I can -- but if the -- if the plaintiffs can
14 hook up anything with this, I would allow it.

15 So let me just say, it is -- while I am not admitting
16 it at this moment, I'm not excluding it. I leave it to you to
17 try to get it -- to basically connect the dots.

18 MR. BROWN: Fair enough.

19 THE COURT: Even if we don't have the document
20 itself, it does seem to me to invoke state secret would seem
21 like it is a very high standard. And I don't think it was ever
22 provided to me. If it was, then please let me know so that I
23 can just resolve this once and for all.

24 MR. BROWN: Your Honor, just one other -- and,
25 Mr. Tyson, I don't want to mischaracterize this.

1 But my understanding is that Fortalice designated it
2 as a state secret in response to counsel's request for it --
3 for counsel for the defendants' request for Fortalice to do so.

4 But I understand your ruling, and we'll connect it
5 up. Thank you, Your Honor.

6 MR. TYSON: And, Your Honor, just to clarify, my
7 recollection of this, given that it was several years ago, is
8 that Fortalice asked for recommendations related to privilege
9 issues. They had identified documents they believed were
10 privileged. I believe they made suggestions to that that they
11 then decided if they wanted to take those or not, is my
12 recollection.

13 THE COURT: Okay. Have you identified the document
14 yourself?

15 MR. TYSON: I have not, Your Honor. I was sitting
16 here trying to remember if I have ever seen any of these
17 documents on Fortalice's privilege log. And I don't know the
18 answer, sitting here.

19 THE COURT: But if you do and you see it is relevant,
20 I would ask you -- because even if we had to have it as a
21 sealed document, I think, could be relevant. So I think this
22 is my concern of just about what was relevant in '21 might be
23 more relevant now. It might be marginally relevant and
24 therefore warrant a state secret might not be in the same
25 posture at this juncture.

1 MR. TYSON: Thank you, Your Honor.

2 THE COURT: All right. I don't want to interrupt
3 anyone who had questions that were outstanding that I may have
4 missed, and I didn't know whether defense counsel were going to
5 ask any other questions based on the follow-up questions. You
6 can obviously ask questions once I do. But if you aren't
7 through, just tell me now.

8 Okay. No one has raised their hands, so I'm
9 proceeding.

10 MR. MARTINO-WEINHARDT: Only about the 2019 report.

11 THE COURT: Yes.

12 REEXAMINATION (Further)

13 BY THE COURT:

14 **Q.** So I reviewed everything about that again. And so you
15 were asked by counsel for plaintiffs some questions about --
16 relating to Fortalice that I wanted to follow up on, sir.

17 And you were asked, do you recall in 2019, the Secretary's
18 office engaged Fortalice to do a security assessment of the
19 BMDs -- the Dominion BMDs that it was just beginning to roll
20 out into the State?

21 Do you remember that discussion?

22 **A.** You said for the what? You said BMD?

23 **Q.** That is right.

24 **A.** Okay. Yes. This was the assessment we asked them to come
25 in and just look at BMDs for us.

1 **Q.** Right.

2 **A.** Yep.

3 **Q.** And you indicated in response to counsel's questions, I do
4 not recall being very involved.

5 And then you were asked, who was involved? And you said,
6 I'm not sure. I think that Michael Barnes would have been
7 involved because the Center for Election Systems would be
8 overseeing -- they would have kind of equipment, basically,
9 that we would have had -- we would have and then be delivering
10 it to counties, so I would be speculating in addition to that.

11 And then --

12 MR. MARTINO-WEINHARDT: Your Honor, I believe that is
13 referring to Mr. Germany's testimony from Friday, not
14 Mr. Beaver's testimony.

15 THE COURT: Okay. All right. Excuse me. Let me
16 stop there.

17 BY THE COURT:

18 **Q.** Is it your understanding that Mr. Barnes was involved in
19 that project?

20 **A.** So Mr. Barnes runs our CES group.

21 **Q.** Right.

22 **A.** He is responsible for managing the distribution and
23 working with counties with election equipment that is in the
24 counties.

25 So that means when the State bought thousands and

1 thousands of pieces of equipment, he had to manage the
2 inventory and distribution of that. So he was very much
3 involved with that. He is also responsible for ballot
4 generation, and those ballots get put on the BMDs, so that is
5 his involvement.

6 Now, as for security --

7 **Q.** That is what I was trying to determine.

8 **A.** He is not responsible for the security. We have vended
9 that to Dominion.

10 **Q.** All right.

11 **A.** So --

12 **Q.** And that was already so in 2000 -- the fall of 2019 that
13 you vended it to Dominion?

14 **A.** To Dominion, exactly.

15 And when we brought Fortalice in, that would have been
16 because they are our security vendor of choice. I was not
17 involved with that inspection and that assessment, but I am
18 pretty confident that Dominion had people there with them,
19 so -- because they would be the ones to respond to whatever
20 came out of the Fortalice assessment.

21 **Q.** And do you know whether they did provide a response to the
22 assessment?

23 **A.** No. I had asked -- that was, I think, in the time frame I
24 had asked not to get paper reports.

25 **Q.** Okay. There was a paper report issued in -- on

1 November 27, 2019, by Fortalice Solutions regarding its sort of
2 initial review, and that was in a pretty early time, I realize,
3 in this life of the BMD system in Georgia.

4 Did you review that yourself?

5 **A.** No. It wouldn't make sense for me to review it because I
6 wasn't responsible for the security. I would have deferred it
7 to the Dominion folks.

8 **Q.** I see.

9 And would it be your practice then that anything that
10 Dominion handled as to security, you would not have been
11 involved in?

12 **A.** Correct.

13 **Q.** All right.

14 **A.** That's part of their responsibility.

15 **Q.** So in turn, at the time there were issues in Coffee
16 County, would it have been still Fortalice's responsibility
17 then to handle the security issues?

18 **A.** So once again, Coffee is a county, so I wouldn't have been
19 pulled in at all. The most I might hear it as a rumor that
20 something happened after the fact.

21 People in the Secretary of State's office knows that
22 Fortalice is our cybersecurity vendor, so they could have
23 easily been called on to come help and evaluate or help Coffee
24 County do whatever they needed to do. That is very possible.
25 And the results out of that, if it was a Dominion software they

1 are looking at, would have gone to Dominion.

2 **Q.** Well, what if the State was concerned about the possible,
3 essentially, infection of other parts of the system because of
4 whatever was happening in Coffee County, such as the
5 distribution of confidential software as a result of their
6 handling?

7 **A.** Okay. So the systems -- it is -- now we're going to say
8 election systems -- are broken in pieces. Each one is
9 isolated. Most of which data runs downhill.

10 So if you imagine a water tower and you've got a person's
11 house, if you put infectious stuff in someone's tub and you
12 fill it up with water, there is no way that infection is going
13 to get back up in the water tower. The elections system is
14 much like that.

15 So doing something out in the county to infect that data
16 isn't going to work its way upstream because we feed down to
17 the counties. Results are hand-filled in for the elections up.

18 So malware or something at the county level would stay in
19 the county level. And we have tools that help the counties
20 look at their systems that say, your BMD or this device or that
21 device has ten files on it that make up the application that
22 Dominion gave you.

23 If anybody was to put malware on it -- and we talked about
24 this on one of my depositions before -- malware has size, takes
25 up space, is identifiable. And the tools we have let the

1 counties scan their devices and look at, if there's ten files,
2 then this should only have ten files on it, and each of them
3 should be this size, and if somebody puts something else in
4 there, it is going to be a different size. If it is going to
5 be at least -- someone could say, well, what if it's the same
6 size?

7 Then it has not got the capability to do what it needs to
8 do as well as be a malware. Because, remember, malware has
9 size. So it would have to be additive. So that is why we do a
10 scan to verify that the applications that are on our tools meet
11 a level. Basically, this is what they should look like.

12 **Q.** And --

13 **A.** And we have never run into a problem. We have tested and
14 tested and tested and never run into a problem that sizes were
15 wrong.

16 Now, you might have a machine that gets corrupted, meaning
17 the computer hard drive died or something on it died. It is
18 just broken. And when you scan, yeah, the files are corrupt,
19 so we wipe them out and either start new or replace.

20 **Q.** And when is the scan done for the size which you are
21 identifying is a critical component of your security system?

22 **A.** When is that done?

23 **Q.** Yes.

24 **A.** Michael Barnes would know that. Once again, that is a
25 county thing. I just know that there is a tool that they use.

1 The actual execution of it would be something he deals with the
2 county. And it more than likely is an advice to the county as
3 on how to manage their systems. I do not believe he actually
4 goes and does any of that. He will educate with them on how to
5 do it.

6 **Q.** So at this juncture without -- since you say you had never
7 read the report and it still -- it has been sealed in the past
8 because of the assertion of attorney-client privilege -- and
9 I'm not quite at the point of making a decision about that, but
10 I want to ask you this.

11 The -- it is indicated that the purpose of the report is
12 to highlight any areas of weakness in process or procedure in
13 which a malicious actor may find themselves in a position to
14 affect input or output of election data.

15 Did anyone, whether from Dominion, a representative of
16 Dominion, Mr. Barnes, or anyone else discuss with you the
17 weaknesses that they did -- that Fortalice did identify?

18 **A.** No. I have never had a discussion -- and I presume you're
19 talking about Coffee County?

20 **Q.** No. I'm really talking about the system as a whole, the
21 software system -- the Dominion system as a whole.

22 **A.** The things that have been discussed were the tools that
23 were needed to do that testing, and we have helped with
24 packaging and helped them do those scanning tools for the
25 counties --

1 **Q.** Okay.

2 **A.** -- to be able to do that.

3 **Q.** Well, this particular evaluation was an initial one in
4 2019 prior to full implementation of the system, and the
5 purpose was to highlight any areas of weakness in process or
6 procedure in which a malicious actor may find themselves in a
7 position to affect input or output of election data.

8 Did Mr. Sterling or anyone else or counsel discuss that
9 with you, what the results of that review were?

10 **A.** No, it has never been discussed with me anything about
11 this --

12 **Q.** Were you --

13 **A.** -- or anything relevant to what sounds like you're talking
14 about.

15 **Q.** And did anyone identify -- without reference to the
16 specific, you know, that it came from Fortalice -- the
17 weaknesses, the particular weaknesses flagged?

18 **A.** No, I have not heard of any weaknesses that have been
19 flagged with the system.

20 **Q.** Okay.

21 **A.** As I said, the only thing that we have been involved with
22 is that tool to help them verify file sizes.

23 **Q.** Now, Mr. -- Mr. Barnes did testify before you. And my
24 understanding -- I don't want -- was that he was not a person
25 who was responsible for security, though.

1 **A.** Correct. He was operations. Think of him strictly
2 operations. He was in charge of training, distribution, those
3 big things.

4 THE COURT: Are there questions occasioned by mine?

Because if this witness is not familiar with the report other than, you know, as to the questions I've pointed, I don't know that it is -- how worthwhile it would be to examine him about it, given what he has stated so far. It doesn't mean I have made a final decision on the report, but I'm not sure it is essential at this point.

11 MR. CROSS: That may be right, Your Honor. I know my
12 colleague had a few questions just to see if he knows --
13 understanding he hasn't seen the report, I don't know if
14 anything was conveyed to him, so I thought my colleague may
15 have --

16 THE COURT: He can ask that.

17 MR. CROSS: -- just a couple of questions to see if
18 he has any insight.

19 THE COURT: All right.

20 | RECROSS-EXAMINATION (Further)

21 BY MR. MARTINO-WEINHARDT:

22 Q. Just briefly, Mr. Beaver.

23 You were involved in the coordination in setting up this
24 2019 assessment of the BMDs; right?

25 **A.** I would have been the person who would have approved

1 having Fortalice do it, but the actual working as a project
2 with them would have been one of my project people.

3 **Q.** Are you aware of any of the results of that assessment?

4 **A.** No.

5 **Q.** Are you aware whether Fortalice was able to hack the BMDs?

6 **A.** No.

7 **Q.** Are you aware whether Fortalice was able to obtain access
8 to log files?

9 **A.** No.

10 **Q.** Are you aware of whether Fortalice was able to change any
11 log files on the BMDs?

12 **A.** No.

13 **Q.** Are you aware of whether Fortalice was able to obtain
14 super-user access?

15 **A.** No.

16 **Q.** Whether they were able to access the operating system of
17 the BMDs?

18 **A.** No.

19 **Q.** Do you know whether Fortalice in their 2019 assessment
20 were able to change the operation of the BMD in any way?

21 **A.** No.

22 **Q.** Do you know whether Fortalice in their 2019 assessment was
23 able to change the way votes would be tabulated when voting on
24 a BMD?

25 **A.** No.

1 **Q.** Who would have that knowledge?

2 **A.** Probably have to ask Fortalice who worked with them on
3 this.

4 MR. BOYLE: Your Honor, I'd just like -- for the
5 record, I just -- clearly, Mr. Beaver has testified repeatedly
6 he has no knowledge of this report.

7 I don't want my silence to be taken as a waiver of
8 these questions to any other witness because we think the
9 report is work product, and you have already ruled on that.
10 And even if there were a witness with knowledge, that would be
11 improper questions of that witness.

12 THE COURT: All right. Your assertions are all
13 properly done to document your record as to your position.

14 BY MR. MARTINO-WEINHARDT:

15 **Q.** Mr. Beaver, you weren't at all curious about what
16 Fortalice found in its 2019 assessment of these BMDs?

17 **A.** I wouldn't say I wasn't curious. I have lots of other
18 things that are on my plate. Nothing got flagged to me that I
19 needed to address, so it never came up again.

20 **Q.** So as CIO, you had -- it wasn't raised to you what the
21 results of this assessment of your new voting system that would
22 be implemented across Georgia were?

23 **A.** And I have said before, I am the CIO for the Secretary of
24 State's IT systems. BMDs are not part of my domain.

25 THE COURT: Whose domain are they under then?

1 THE WITNESS: That would be the counties.

2 THE COURT: You mean when they are implemented there?

3 THE WITNESS: Yes.

4 THE COURT: All right.

5 MR. MARTINO-WEINHARDT: No further questions, Your
6 Honor.

7 THE COURT: Mr. Brown, did you have anything more?

8 MR. BROWN: No, Your Honor. Thank you.

9 THE COURT: Mr. Oles?

10 MR. OLES: Nothing further.

11 THE COURT: All right.

12 MR. BOYLE: Yes. We are done. Thank you.

13 THE COURT: All right. Thank you very much. Please
14 don't discuss your testimony with anyone because you could
15 still be recalled. All right? Thank you very much.

16 And you have gone on post December to where? I know
17 you went --

18 THE WITNESS: To Austin.

19 THE COURT: To Austin?

20 THE WITNESS: Austin, Texas --

21 THE COURT: Wow.

22 THE WITNESS: -- to take care of grandkids.

23 THE COURT: To take care of grandkids. Well, good
24 luck with that, and I'm sorry that you might still be subject
25 to recall. But that is great.

1 Who is plaintiffs' next witness?

2 MR. CROSS: The plaintiffs call Gabriel Sterling to
3 the stand.

4 **(Witness sworn)**

5 COURTROOM DEPUTY CLERK: Please have a seat. If you
6 would, loud and clearly state your name and spell your full
7 name for the record.

8 THE WITNESS: My name is Robert Gabriel Sterling,
9 R-O-B-E-R-T, G-A-B-R-I-E-L, S-T-E-R-L-I-N-G.

10 Whereupon,

11 ROBERT GABRIEL STERLING,

12 after having been first duly sworn, testified as follows:

13 CROSS-EXAMINATION

14 BY MR. CROSS:

15 Q. Good afternoon, Mr. Sterling.

16 A. Good afternoon.

17 Q. I appreciate you being here.

18 Mr. Sterling, what is your current role with the Secretary
19 of State's office?

20 A. I am the chief operating officer, chief financial officer,
21 and the director of licensing.

22 Q. Sounds like a hat trick.

23 What are your general roles and responsibilities at the
24 Secretary of State's office?

25 A. They are very broad. We're a small agency. I am --

1 oversee operations, generally speaking, both the financial
2 side. IT reports to me.

3 Obviously, being director of licensing, the licensing
4 division reports directly to me, admin, which involves AR, AP,
5 all the financial side. And I have an indirect operational
6 role in most of the different divisions of the agency.

7 I also handle some duties in terms of speaking to the
8 public. And although it is not a direct thing of dealing with
9 legislative issues and budgetary issues as in like -- as in
10 this week, it is budget week. And the Secretary has a joint
11 budget hearing tomorrow, and I'm having to work on preparation
12 for that if I'm not here.

13 **Q.** How long have you been the chief operating officer?

14 **A.** There's two different sections of time. Originally, from
15 January 14 of 2019, until sometime in November of 2019, I held
16 officially that role. I exited that role to be the
17 implementation -- what was our full title for that one --
18 implementation manager for the statewide voting system. And
19 part of the rationale for doing that was we had to hire
20 somebody to do my duties. And the budget constraints, I had to
21 exit that role. And also, bond money which was paying for the
22 project could not pay for direct employee of the State. So we
23 were going to be paying for the project management out of that
24 bond anyway.

25 So I held that role in November, exited it for a short

1 period of time during the budget period, I believe for about
2 two weeks in January of '20 to go assume those duties again,
3 then resumed it right after that, probably February 1 or late
4 January until December 31st of 2020.

5 And then I have been chief operating officer since then.
6 I left the CFO position for a while. We had a CFO that
7 subsequently left the office. I hired a deputy who has been
8 handling some of those things -- officially CFO duties. And I
9 picked back up. I began the division of licensing duties in
10 January 1 of 2021.

11 **Q.** Mr. Sterling, you agree that the Dominion voting software
12 used in Georgia's current voting system is not secure
13 proprietary software in many respects? You agree with that
14 right, sir?

15 **A.** Not with the way you frame it. I'm not understanding your
16 question fully. I mean, I need more context.

17 **Q.** Do you agree or disagree with that statement?

18 **A.** I would disagree -- I mean, when you say not proprietary,
19 I don't know exactly what that means from your point of view.

20 THE COURT: I'm sorry, sir. Could you just talk a
21 little bit slower. It will make the record clearer. And
22 because we're dealing still with complicated issues, it will
23 probably be more illuminating to me too.

24 THE WITNESS: Your Honor, I apologize on the front
25 end. And anybody who has sat through a deposition with me

1 knows I struggle with this, but I will do my best. And feel
2 free to call me down as you can.

3 BY MR. CROSS:

4 **Q.** Mr. Sterling --

5 **A.** Repeat the question for me.

6 **Q.** Yeah. Do you recall being deposed in October of 2022?

7 **A.** Yes, sir.

8 **Q.** And if it helps you to take a look, one of the binders in
9 front of you is the transcript of your October 2022 deposition.
10 If you flip the cover -- I'm not sure which is which.

11 **A.** There is no date on one, but the other one is --

12 **Q.** The bigger one, the one you are holding.

13 **A.** This one?

14 **Q.** Yep. And if you turn to page --

15 **A.** No, this is February of 2022. So this must be the -- it
16 is in the same one.

17 **Q.** Sorry. I confused you.

18 **A.** I'm on Page 1 of the document, yes, sir.

19 **Q.** So if you flip to Page 178, Line 15, if you would. You
20 can read that to yourself if you need to.

21 But do you recall that I asked you the question, but it is
22 not just that this Dominion software is more modern? It has
23 more vulnerabilities in its design, including some -- that some
24 of it is just off-the-shelf software. It is not -- it is not
25 secure proprietary software in many respects; right?

1 There was an objection interjected. You started to
2 answer. You said there's two ways of looking at proprietary
3 software. Usually, when you have --

4 And then I asked you, well, hold on. Just answer my
5 question. Do you disagree with what I just said?

6 And your answer was, no, I don't disagree.

7 Did I read that correctly?

8 **A.** You've read this transcript correctly.

9 MR. BELINFANTE: Objection, Your Honor. If counsel
10 is trying to impeach the witness, he should first be permitted
11 to refresh his recollection because the question was about what
12 the question Mr. Cross posed actually meant. He didn't know
13 what proprietary meant, so he should be at least allowed to
14 review this before it is read into the record.

15 THE COURT: I agree.

16 Would you like to review it now? It is also next to
17 you on the screen.

18 THE WITNESS: I would like to, if I could, read sort
19 of the context on both sides to lead up to it.

20 THE COURT: Yes.

21 BY MR. CROSS:

22 **Q.** Just to be clear, I didn't ask you what proprietary meant.
23 I asked you just a simple yes-or-no question, whether you agree
24 or disagree with the statement that the current Dominion
25 software is not secure in many respects.

1 You said you disagreed with that. You still disagree with
2 that?

3 THE COURT: You mean here?

4 I'm sorry.

5 MR. CROSS: Sorry.

6 THE COURT: The problem is, I'm getting -- and the
7 witness might be confused.

8 Are you clarifying what your question was there at
9 the deposition or right now?

10 MR. CROSS: Just a moment ago. I didn't want to get
11 into a debate of what proprietary means because that is not
12 what I was asking.

13 THE COURT: That's fine.

14 MR. CROSS: Right. So the question I was --

15 THE COURT: It has gotten more muddled at the moment.
16 So let's just step back and pretend that all of that didn't
17 happen. He has the deposition.

18 If you want, ask your question again.

19 BY MR. CROSS:

20 **Q.** Right. So my question is this: Do you agree or disagree
21 with the statement that the Dominion software that is currently
22 used in the Georgia's voting system is not secure proprietary
23 software in many respects? Do you agree or disagree?

24 **A.** I'm going to take a moment to kind of refresh where I'm at
25 on this --

1 **Q.** Sure.

2 **A.** -- because I -- now I think I have a clearer understanding
3 of your question.

4 **Q.** Mr. Sterling, can I ask you, is there a reason why you
5 need to read your deposition just to figure out if you agree or
6 disagree whether the system has --

7 **A.** Because I'm trying -- sir, I'm trying to answer your
8 question.

9 Because I'm trying to understand the context leading up to
10 that answer because there is a lot of things that I've said
11 previous to this talking about how from a point of my view was
12 more secure. And then you asked a very specific question,
13 which I'm getting down to. I just wanted to understand what
14 I'm answering to before and what I'm answering now. So I
15 apologize for taking a moment.

16 **Q.** I think we're losing each other. I'm not asking you about
17 the deposition. I showed it to you purely for impeachment
18 purposes.

19 I asked you -- we can go back and read it -- simply where
20 you agree that the Dominion's software used in Georgia is not
21 secure proprietary software in many respects.

22 Nothing to do with the deposition. I just asked, do you
23 agree with that. You said you do not agree.

24 **A.** In many respects, it is a very broad question, so I'm not
25 going to just flat-out agree to that. Give me some specifics,

1 and I'll be more happy to do it.

2 The, I don't disagree, which was the answer to that
3 question on Line 4 was to this narrow question after a series
4 of other questions. That's kind of my point. I was trying to
5 understand what the context was in your attempt to impeach
6 that.

7 **Q.** Okay. I'm sure Mr. Belinfante will be happy to ask you to
8 explain that.

9 But I read your deposition testimony correctly; right?
10 When you stated under oath that you did not disagree with that
11 statement?

12 **A.** That's correct.

13 **Q.** All right. Thank you.

14 Now, you're aware that Dr. Halderman served a nearly
15 100-page report in July of 2021 detailing certain
16 vulnerabilities that he had identified with Georgia's current
17 voting system; right, sir?

18 **A.** I knew that it existed, yes.

19 **Q.** Okay. In fact, you didn't know that it existed in
20 July 2021; right?

21 **A.** I honestly don't remember when I knew about it, but I know
22 now that that was when it occurred.

23 So you are asking me if I knew that happened, so I'm
24 saying yes.

25 **Q.** But you don't recall when you -- in the last three and a

1 half years, you actually don't recall when you first heard that
2 that report even existed; right?

3 **A.** Something to do with this case, if memory serves, but I
4 don't recall when.

5 **Q.** So as of February of 2022, about seven months after that
6 report was provided to your lawyers, even at that point you had
7 not read the report; right, sir?

8 **A.** No, sir. I mean, that is correct that I had not read the
9 report.

10 **Q.** You hadn't even asked to read it at that time; right, sir?

11 **A.** I don't know if I had or not.

12 **Q.** So if you want to flip to the February deposition, which
13 is the first one, Page 24, and just go to Page 24, Lines 10 to
14 12. And if you read that to yourself for a moment and just let
15 me know when you are done.

16 **A.** What line do I start on again?

17 **Q.** Page 24, Line 10 to 12.

18 **A.** So as of February, no, I had not asked for it.

19 **Q.** Does that refresh your recollection that as of February of
20 2022, you had not asked to read the report?

21 **A.** Correct.

22 **Q.** In fact, you relied on your litigation counsel to
23 determine whether you should read the report; right?

24 **A.** That is accurate.

25 **Q.** And the Secretary himself also relied on counsel to advise

1 him on whether he should read that report; right?

2 **A.** Yes.

3 MR. BELINFANTE: Objection to the extent it calls for
4 attorney-client communication and certainly client's reliance
5 on counsel.

6 MR. CROSS: Well, he testified to it in his
7 deposition, so that is waived.

8 THE COURT: I would agree with that.

9 MR. BELINFANTE: I don't think he can waive it for
10 the Secretary.

11 MR. CROSS: Well, then bring the Secretary in. We're
12 happy to question him.

13 MR. BELINFANTE: Sorry, the Eleventh Circuit told you
14 no for the third time.

15 MR. CROSS: Actually, the Eleventh Circuit said he is
16 free to come in. He is choosing not to. He just cannot --

17 MR. BELINFANTE: The Eleventh Circuit said he does
18 not have to because the testimony which you seek is not
19 essential to the case.

20 THE COURT: All right. The thing is, I think that in
21 his role, this witness could testify whether the Secretary had
22 read it or not.

23 MR. BELINFANTE: He could testify to that. No
24 objection there. It's just whether he was doing it on advice
25 of counsel is the concern.

1 THE COURT: Thank you.

2 MR. BELINFANTE: Thank you, Your Honor.

3 BY MR. CROSS:

4 **Q.** As of February of 2022, Secretary Raffensperger, to your
5 knowledge, still had not read Dr. Halderman's report; right?

6 **A.** Not as far as I know, sir.

7 **Q.** And as of February 2022, to your knowledge, the only
8 person who had read Dr. Halderman's report outside of your
9 litigation counsel was Ryan Germany?

10 **A.** I believe that is correct.

11 **Q.** And Ryan Germany has no computer science training
12 background; right?

13 **A.** Not to my knowledge.

14 **Q.** He is not a cybersecurity expert; right?

15 **A.** No, sir.

16 **Q.** Now, just a month earlier in January 2022, when Ryan
17 Germany was the only person who had read Dr. Halderman's report
18 besides your litigation counsel, the Secretary of State himself
19 called for the public release of that report; right, sir?

20 **A.** Yes, sir, I believe that is correct.

21 **Q.** And if you would take the other binder and flip to
22 Tab 1 --

23 THE WITNESS: Excuse me, Your Honor.

24 I'm assuming this bottle of water is mine?

25 THE COURT: It has not been opened?

1 MR. CROSS: Yeah. If it has been opened, we can get
2 you another one.

3 THE WITNESS: It is not open.

4 BY MR. CROSS:

5 **Q.** I was hoping you were going to get the open one. I may
6 have put something in there for you.

7 He knows me too well.

8 **A.** I doubt that, sir.

9 **Q.** Oh, thank you.

10 **A.** Now, what tab am I going to, sir?

11 **Q.** Go to Tab 1, if you would. It is Exhibit 85.

12 And do you recognize Exhibit 85 as a press release that
13 the Secretary put out on January 27 of 2022, concerning
14 Dr. Halderman's report?

15 **A.** Yes, sir.

16 MR. CROSS: Your Honor, we move Exhibit 85 into
17 evidence.

18 MR. BELINFANTE: No objection.

19 THE COURT: It is admitted.

20 BY MR. CROSS:

21 **Q.** If you come down to the third paragraph. Do you see it
22 begins with, I'm calling?

23 **A.** Yes, sir.

24 **Q.** And here, Secretary Raffensperger himself states in the
25 press release, I'm calling on J. Alex Halderman, the author of

1 a report on alleged vulnerabilities in the Dominion equipment,
2 to ask the judge to publicly release his findings on Georgia's
3 election system and his pre-2020 election testimony.

4 Do you see that?

5 **A.** Yes, sir.

6 **Q.** Do you know whether the Secretary was aware when he made
7 that statement that Dr. Halderman and the plaintiffs had been
8 asking the Court in a span of about six months to publicly
9 release the report, but the Court couldn't do it because the
10 State was objecting?

11 **A.** I do not know.

12 **Q.** Never heard that before now?

13 **A.** I might have, but I'm saying I don't recall right now.

14 **Q.** That's fair.

15 But do you know who made the decision on behalf of the
16 Secretary, or do you know whether he made it himself to ask
17 this Court, insist that that report remain under seal for about
18 six to seven months?

19 THE COURT: I'm --

20 MR. BELINFANTE: Objection. Relevance.

21 Whether the Secretary wanted it published or not, I
22 don't see as relevant to an Anderson-Burdick analysis. And as
23 plaintiffs have framed it, the question of whether the State
24 has done enough to address issues, these are public statements,
25 not issues directly to the security concerns at issue.

1 MR. CROSS: It goes directly to security concerns
2 because the Secretary's office represented to this Court for
3 about six months that this report was so sensitive that it
4 could not get to the press, it could not get to the public, it
5 could not even get to CISA. We asked that in August, and they
6 said it was so sensitive that it couldn't even get to CISA and
7 they wouldn't even share it with Dominion. And as we're going
8 to establish, out of the blue, the Secretary did a complete
9 reversal that bears directly on the decision-making and the way
10 they went about approaching election security.

11 And I'll make a proffer that what you're going to
12 hear -- well, you already heard, actually. We already heard
13 it. He -- the Secretary called for this without a single
14 computer science -- anyone having read this report other than a
15 lawyer, Ryan Germany. It bears directly on the decision-making
16 and how they approach election security.

17 MR. BELINFANTE: There is no link between what the
18 Secretary -- how the Secretary viewed the information, and then
19 in the light of continued press reports, Tweets other things
20 coming in, including from the plaintiffs' side. He decided to
21 release it. That doesn't speak to what is going on in terms of
22 security. I think most people -- I mean, well, I'll leave it
23 at that.

24 MR. CROSS: He decided to release something he said
25 was dangerous to release for months, and what is frustrating is

1 we're hearing a lot of arguments from Mr. Belinfante about why
2 the Secretary decided what he decided, and they told you in the
3 Eleventh Circuit that it didn't matter.

4 THE COURT: I don't want to visit that at the moment.

5 All right?

6 MR. CROSS: Understood.

7 THE COURT: The objection is overruled. But, you
8 know, I can determine myself whether or not it is relevant to
9 the Anderson-Burdick analysis, and, you know, whether counsel
10 can hook this statement up in his disclosure with anything else
11 that he must -- that the plaintiffs must do in terms of an
12 Anderson-Burdick showing.

13 MR. CROSS: Thank you, Your Honor.

14 THE COURT: I mean, it is -- it is -- it may be
15 relevant to the entire what happened next, whether intervention
16 issues and how fast things happened, but I don't know that --
17 you know, that it is a high level of relevance. And I just
18 highlight that for you so we don't waste too much more time on
19 it than we already have. Thank you.

20 BY MR. CROSS:

21 Q. Mr. Sterling, do you understand that the plaintiffs in
22 this case rely in part on Dr. Halderman's findings for their
23 position that Georgia's election system as it is currently
24 designed and implemented is not sufficiently safe and secure?

25 A. The plaintiffs, yes, they do rely on that; correct.

1 Q. And if you come back to Exhibit 1 -- or sorry, Exhibit 85,
2 at the end of that paragraph --

3 THE COURT: The third paragraph?

4 MR. CROSS: The third paragraph, yes, ma'am.

5 BY MR. CROSS:

6 Q. The same one we were reading.

7 Do you see that again, Secretary Raffensperger himself
8 says, Georgia's election system is safe and secure? Do you see
9 that?

10 | A. Yes.

11 Q. And do you have an understanding in your work with
12 Secretary Raffensperger and as the COO, was Secretary
13 Raffensperger just offering a personal opinion with that
14 statement?

15 **A.** Opinion based on the work of our elections team and
16 various outside inputs of it. I don't want to get too much
17 into his mind, whether it was a personal belief, a belief based
18 on what the office is doing, but they are kind of conflated, in
19 my mind, as a similar situation.

20 Q. The statement he is making there, fair to say he was
21 making it as the Secretary of State, he wasn't just personally
22 pontificating on his views?

23 | A. Sure.

24 Q. And he was relying on information provided to him in his
25 role as Secretary of State?

1 | A. Yes.

2 Q. Do you know whether Secretary Raffensperger understands
3 the workings of the Dominion BMD the way it works?

4 **A.** In a generalized sense. No more than I know computers
5 work, but I don't know exactly how they work, so in that kind
6 of way.

7 Q. But he has a general understanding of the workings of the
8 Dominion BMD; is that fair?

A. I think that would be a fair statement.

10 **Q.** Were you aware that in 2021, your litigation counsel
11 objected to Dr. Halderman providing his report to CISA?

12 A. I believe I was, yes.

13 Q. And do you know who at the Secretary's office made that
14 decision to assert that objection?

15 **A.** It would -- I know that Ryan would have had a part -- a
16 good part saying in that, yes.

17 Q. Do you know whether the Secretary himself was involved in
18 that decision?

19 **A.** He would have been in discussions, obviously. And at the
20 end of the day, I would assume, you know, we -- there's sort of
21 like a sort of flat leadership internal to it. And the
22 Secretary is informed of these things --

23 | (Reporter admonition.)

24 THE WITNESS: I apologize.

25 We have sort of a flat leadership structure

1 internally, and there were discussions with the Secretary. And
2 we've kind of come to a generalized consensus, but he is
3 obviously the elected official. He's is the final arbiter on
4 anything, where there might be -- there wasn't any real -- I
5 don't recall the exact nature of the conversation, but he would
6 have been aware of it and been involved in it.

7 BY MR. CROSS:

8 **Q.** You yourself did not participate in any discussions where
9 the decision was made in January of 2022 to call for the public
10 release of the report; right?

11 **A.** I may have been.

12 **Q.** So flip back to your February deposition, the one in the
13 front of the deposition binder, and to Page 74, if you would.

14 **A.** You said 74, sir?

15 **Q.** Yes, sir. The February 1, Page 74.

16 You can start at Line 11 and just read that to yourself,
17 if you would. Through Line 18 is what I'm focused on.

18 THE COURT: What was the exhibit number?

19 MR. CROSS: It is the February deposition.

20 THE COURT: Oh.

21 MR. CROSS: And does Your Honor have a copy of the
22 deposition?

23 THE COURT: I probably do, but I don't see it.

24 MR. CROSS: We can get you one.

25 THE WITNESS: Mr. Cross, can you give me the line

1 numbers again, please?

2 MR. CROSS: Yes. Sure. It is Page 74, Lines 11 to
3 18 is what I'm focused on.

4 And just read that to yourself and then the --

5 THE COURT: These are the documents.

6 MR. CROSS: Yeah. It is two binders, one with
7 documents, one with the deposition.

8 BY MR. CROSS:

9 **Q.** And just tell me whether that refreshes your recollection
10 that you did not participate in any discussions where the
11 decision was made to call for the public release of
12 Dr. Halderman's report in January of 2022.

13 **A.** It does. My memory there would have been obviously closer
14 the time period.

15 **Q.** Right. And so you learned about the decision after it was
16 made; right?

17 **A.** Yes.

18 **Q.** Now, you yourself first read Dr. Halderman's report in
19 October of 2022; right?

20 **A.** I believe that is correct, yes.

21 **Q.** And do you recall that you were deposed on October 12th of
22 2022?

23 **A.** Yes, sir.

24 **Q.** And you read Dr. Halderman's report for the first time
25 over the weekend before that deposition.

1 Do you recall that?

2 **A.** Yes, sir.

3 **Q.** In the version you read, you didn't see any redactions;
4 right?

5 **A.** I don't recall any, no, sir.

6 **Q.** Mr. Sterling, you're familiar with something called the
7 SAFE Commission; right?

8 **A.** Yes, sir.

9 **Q.** And the SAFE Commission was set up by the Secretary's
10 office to help make the decision on what the next voting system
11 would be in Georgia after the DREs were replaced?

12 **A.** Under Secretary Kemp; correct.

13 **Q.** And the only cybersecurity expert who served on the SAFE
14 Commission was a man by the name of Dr. Wenke Lee; right?

15 **A.** That's correct.

16 **Q.** And he was chosen by Secretary Kemp; right?

17 **A.** I believe so, yes.

18 **Q.** And you're aware that Dr. Lee, as the only cybersecurity
19 expert on the SAFE Commission, vocally objected to using BMDs
20 as the new system; right?

21 **A.** Yes, sir.

22 **Q.** If you could flip to Tab 3 in the exhibit binder.

23 **A.** That is the other one?

24 **Q.** Yes, sir.

25 MR. BELINFANTE: Which tab? I'm sorry.

1 MR. CROSS: Tab 3, Josh. Yeah.

2 BY MR. CROSS:

3 Q. This is going to be -- it is marked as Defendants' Trial
4 Exhibit 1020.

5 A. Any particular page, or just the whole thing?

6 Q. We're going to get there.

7 Do you recall -- well, let me take a step back.

8 What was your involvement with the SAFE Commission?

9 A. When the Secretary came in and when he was sworn in on
10 January 14th, but even before that, I think he sat in on the
11 SAFE Commission meeting in Macon. I attended it, and it was
12 probably, I think, the last one of them before they filled
13 their final report.

14 So we weren't really -- I wasn't really involved in the
15 SAFE Commission. I was sort of there to get the final work
16 product of the SAFE Commission.

17 Q. Okay. So if you flip to Tab 3, I think you are there.

18 It's Defendants' Exhibit 1020. And you can flip through it.

19 Do you recognize Defendants' Exhibit 1020 as a PowerPoint
20 presentation that Dr. Wenke Lee made to the SAFE Commission
21 expressing his opposition to adopting BMDs?

22 A. I recall this, but I mean, only -- I remember the cartoon
23 more clearly than anything.

24 So yes, I do recall it.

25 Q. You recall the presentation?

1 **A.** Yes.

2 MR. CROSS: Your Honor, we offer Exhibit 1020 into
3 evidence.

4 MR. BELINFANTE: Objection. One, hearsay. Dr. Lee
5 is not here to testify to it, so it can't be admitted for the
6 truth of the matter asserted.

7 Two, it has been described as expert testimony. I
8 want to be sure that it is limited and not deemed as such.

9 And, Number 3, I don't think Mr. Sterling's general
10 recollection, and specifically of one page of it, the cartoon,
11 is sufficient authentication for an exhibit that is apparently
12 20 pages.

13 MR. CROSS: Briefly, Your Honor, we're not offering
14 it as expert testimony.

15 And to the hearsay which relates to the same thing,
16 we're also not offering it for the truth, we're offering it
17 simply to show that the statements were made, and so the
18 Secretary's office decision-makers were on notice of the
19 statements being made.

20 And regardless of whether they are true or not, we'll
21 rely on Dr. Halderman and others to get to the truth of it,
22 Your Honor.

23 MR. BELINFANTE: Your Honor, if it is not being
24 admitted for the truth of the matter asserted, then it is
25 irrelevant because having notice of something that is neither

1 known to be true nor false is not any kind of material notice
2 of anything.

3 THE COURT: All right. I'm not clear. Is it -- are
4 you only -- are you just showing one page, or is there a full
5 document that you -- did you introduce the full document at the
6 deposition?

7 MR. CROSS: We are -- I'm moving to introduce the
8 full document. I just asked him to flip through it. I said,
9 are you familiar with -- do you recall the presentation? He
10 said yes.

11 I understood him to say he remembered it because of
12 the cartoon, not that he remembered only the cartoon.

13 We can go back and look --

14 THE WITNESS: And I remember clearly the cartoon of
15 that, but I don't -- I haven't even looked it all the way
16 through yet because you-all were discussing it, so --

17 THE COURT: All right. Well, why don't you look at
18 the whole document.

19 THE WITNESS: And I will answer honestly. I remember
20 this exists, but the internals of it, no strong recollection.
21 I just remember the cartoon, I thought, was memorable because I
22 hadn't seen one like that since then, so --

23 THE COURT: Is it an exhibit number here, or you are
24 doing it from the deposition?

25 And if it is an exhibit number here --

1 MR. CROSS: The exhibit -- sorry, Your Honor.

2 THE COURT: -- please let me know what it is.

3 MR. CROSS: The exhibit number here -- it is an
4 exhibit the defendants actually themselves put on their list.
5 I'm a little surprised by the authenticity objection. It is
6 Defendants' Trial Exhibit 1020.

7 THE COURT: All right. I'm not going to be able to
8 find it at the moment.

9 All right. If you had referred to it as a tab
10 number, I might have found it.

11 MR. CROSS: Yeah. I'm sorry.

12 THE COURT: That's all right. That's fine.

13 MR. CROSS: Sorry.

14 THE WITNESS: Tab 3.

15 MR. CROSS: I couldn't find a tab number that went up
16 to 1020, so they don't correspond.

17 THE COURT: All right. So are you just trying to get
18 at this question? If not, then just ignore me.

19 Are you trying to get at -- did the witness -- was he
20 conscious that Mr. Wenke was, first of all, on the commission
21 and had in his -- based on his professional experience and
22 study introduced some slides outlining the concerns? Is that
23 the question you're trying to ask?

24 MR. CROSS: Yes, Your Honor. Mr. Sterling already
25 testified without objection that he was aware that Dr. Wenke

1 Lee was selected by Governor Kemp, then Secretary of State, to
2 serve on the commission. In his role in that commission, he
3 vocally objected to BMDs.

4 I was bringing this in just to give the Court the
5 specifics of what his objections were without getting to the
6 truth. We do not need this to prove the truth. We have other
7 folks that will do that.

8 It is just to show that the Secretary's office and
9 decision-makers were on notice of what the concern was from the
10 only cybersecurity expert on the commission.

11 THE COURT: All right. With that advisement, I'm not
12 accepting it for the truth of the statements, but just simply
13 that this is -- would have flagged Professor Wenke's concerns
14 to public officials is -- whether true or not, did it, in
15 fact -- did it flag that for you?

16 THE WITNESS: To the degree -- I'm trying to answer
17 this question. Because the Secretary of State's office is an
18 executive position, we didn't make the decision to do BMDs.
19 That was a decision -- a policy decision of the legislature,
20 who, in law, said, you have to use a BMD.

21 So that was kind of -- that was our posture in
22 dealing with the situation at the time because HB 316 hadn't
23 been written yet. This predated that, but not by a lot.

24 What was the date of this again, or is there a date
25 even?

1 THE COURT: Do you know when this was generated? It
2 was likely generated during the legislative session, don't you
3 think?

4 MR. CROSS: Yeah. My understanding, it was a
5 presentation made -- well, I mean, I guess let me -- I'll ask
6 the question.

7 BY MR. CROSS:

8 **Q.** You said you recognized this.

9 Do you recall that this was a presentation that Dr. Wenke
10 Lee actually made to the SAFE Commission in one of their
11 meetings?

12 **A.** Again, I'm assuming it probably is given the nature of it,
13 and I do recall that. Whether it was the one I was at or a
14 previous one or something subsequent, I don't know.

15 **Q.** But you -- the cartoon, for example, stands out
16 particularly in your mind that Dr. Lee put on a presentation of
17 this nature with something similar to that in a SAFE Commission
18 meeting where he --

19 **A.** Yeah, I may not have seen the presentation. I made a -- I
20 was given a hard copy later on. This is sort of -- this
21 particular page, whatever reason, went to my -- I just remember
22 it more clearly.

23 MR. BELINFANTE: Your Honor, I realize that you've
24 ruled it admissible on some grounds. But given that we can't
25 establish the date and that does seem to be relevant to the

1 timeline of notice, I would again object now on the grounds
2 again of improper authenticity because we don't know the date.

3 And the reason that it is on our list is that Dr. Lee
4 was originally, I believe, on plaintiffs' will call list and
5 certainly on a may call list, so we wanted to have it so that
6 he could testify to it.

7 THE COURT: Let me just say, Dr. Wenke, I thought,
8 had testified here before.

9 MR. CROSS: He has not. Dr. Lee has never testified.

10 THE COURT: All right.

11 MR. CROSS: Yeah.

12 THE COURT: All right. We can hook it -- I mean, I
13 can always rule it outside of it, but my understanding from
14 past hearings was that he introduced this during the course of
15 his discussions with the SAFE Commission.

16 MR. CROSS: Correct.

17 THE COURT: If that turns out to be wrong, we'll
18 exclude it if he says no, it was later, and therefore it is not
19 really relevant in some way.

20 MR. BELINFANTE: Correct, Your Honor. The
21 authenticity objection is just as to whether it was -- it was
22 presented before the legislative session, during or after.

23 THE COURT: Right. And we don't know for sure. And
24 we'll either -- once we know it, we can know for sure.

25 So it is conditionally admitted based on the

1 understanding that we have that it was either before or during
2 the legislative session.

3 MR. BELINFANTE: Thank you.

4 MR. CROSS: Thank you, Your Honor.

5 BY MR. CROSS:

6 **Q.** Mr. Sterling, you're aware that at a September 2020
7 hearing in this case, Dr. Halderman demonstrated one method by
8 which the current voting equipment could be hacked to alter a
9 QR code?

10 Were you aware of that?

11 **A.** I'm sure I probably was. I don't recall it right now,
12 specifically.

13 **Q.** But you also are aware that in response to that
14 demonstration, the Secretary's office took no steps to protect
15 against that particular hack in the November 2020 election; is
16 that right?

17 **A.** I think that we had protections already in place to
18 prevent -- I don't know the specific kind that you are
19 discussing here, so I can't say for certain. I know that there
20 are procedures and protocols that we go through in order to
21 defend against any kind of attack in general.

22 But I mean, specifically, I couldn't say because I don't
23 know which one of the several different kinds he's talking
24 about there.

25 **Q.** And it is hard to mitigate against something if you don't

1 have the details of it; right?

2 **A.** Well, again, if you -- without knowing the specific
3 question you're asking me, it would be very difficult for me to
4 answer, you're right.

5 But in general, if you don't know the details of
6 something, it would be harder to do.

7 But again, I believe our general procedures and practices
8 help mitigate several different types of potential
9 vulnerabilities.

10 **Q.** Georgia's current Dominion system does not -- is not
11 required to scan QR codes to tabulate ballots?

12 **A.** That's correct.

13 Not under law. Under operational needs, yes.

14 **Q.** Yes. And you agree that Georgia currently does not have
15 enough audits for its elections?

16 You would like to see more; right?

17 **A.** Yes. We have lobbied for more. We got more in SB 222, I
18 believe, in the last session to now every federal race and
19 every -- there is going to be one for every federal election
20 and every statewide election.

21 But I think we should have more at the local level
22 randomly done so they can get the muscle memory there to be
23 able to do that and do their ballot manifests and everything
24 because doing it once every two years was inadequate from my
25 point of view.

1 Q. She is going to yell at you.

2 Dominion has mobile ballot-printing software that can be
3 used to print ballots on demand at polling sites once a voter
4 checks in; right, sir?

5 **A.** They do.

6 But I will say that they are prone to human error, unlike
7 the system we have set up now.

8 MR. CROSS: I didn't ask for that. I'll move to
9 strike as nonresponsive.

10 MR. BELINFANTE: I would object to striking. He can
11 explain his answer more fully.

12 MR. CROSS: Tony, can you play 491?

13 (Playing of the videotape.)

14 BY MR. CROSS:

15 Q. Do I understand correctly that Secretary Raffensperger is
16 sitting in his office?

17 | A. Yes, sir.

18 Q. And is he offering -- in your dealings with him in your
19 role as the COO, do you have an understanding of whether he was
20 offering a personal opinion there or was he speaking as the
21 Secretary of State?

A. I would say he is speaking as Secretary of State.

Q. Let's talk a little bit about Coffee County.

24 You're aware that there were a series of breaches in

25 Coffee County in January of 2021 involving components of the

1 voting system; is that right, sir?

2 **A.** There was unauthorized access granted, yes.

3 **Q.** And you've watched surveillance video from the Coffee
4 County election office from January of 2021; right?

5 **A.** Yes, sir.

6 **Q.** And you have seen folks go in and access equipment that
7 they were -- did not have authorization from the State to
8 access; right?

9 **A.** That's correct.

10 **Q.** And only the State, specifically the SEB, can grant that
11 kind of access; right?

12 **A.** For an outside group, I think that is legally and by rule
13 correct.

14 **Q.** Okay.

15 MR. CROSS: Let's pull up Exhibit 493, Tony. No,
16 sorry, the video.

17 BY MR. CROSS:

18 **Q.** Do you recognize the video slip sheet, sir? Have you seen
19 that before?

20 **A.** I do not. I apologize.

21 **Q.** I was going to offer it, but Josh is going to object.

22 Let's play this. And tell me if you recognize what you
23 see here after you have watched it.

24 **(Playing of the videotape.)**

25

1 BY MR. CROSS:

2 Q. Now, just if you look at the top, you can see there is the
3 date stamps and timestamps. It gives you some context for what
4 is happening when.

5 A. Yes, sir.

6 (Playing of the videotape.)

7 BY MR. CROSS:

8 Q. Mr. Sterling, do you recognize what we just watched as
9 surveillance video footage that you have seen in your role as
10 COO in the Secretary of State's inquiry into what happened in
11 Coffee County in January of 2021?

12 A. Yes.

13 MR. CROSS: Your Honor, we move Exhibit 493 into
14 evidence.

15 MR. BELINFANTE: I know Your Honor has already ruled
16 on this, but we just renew our objection to the Coffee County
17 from a few days ago just for the record's purposes.

18 THE COURT: All right. It is admitted.

19 MR. CROSS: Thank you, Your Honor.

20 Let's play Exhibit 494, please.

21 (Playing of the videotape.)

22 BY MR. CROSS:

23 Q. That's you; right, sir?

24 A. Yes.

25 Q. And what you were talking about is the allegation of the

1 type of access we just saw in Coffee County, and you said it
2 didn't happen in April of 2022; right?

3 **A.** Yes.

4 **Q.** And you were mistaken?

5 **A.** Yes.

6 **Q.** To be clear -- I'm sorry, I think I asked you this before.

7 The State did not authorize what we just saw on that video
8 surveillance; right?

9 **A.** That's correct.

10 **Q.** Are you -- do you recall that the Secretary -- Secretary
11 Raffensperger testified before Congress concerning election
12 security, and that was on November 21st?

13 THE COURT: I think there is a water.

14 MR. CROSS: Oh, yeah. Go ahead.

15 THE WITNESS: I'm sorry.

16 Can you restate your question?

17 BY MR. CROSS:

18 **Q.** Yes.

19 Do you recall that the Secretary testified at a
20 Congressional hearing in November of 2021 concerning election
21 security issues?

22 **A.** Honestly, no, I don't recall that.

23 **Q.** Are you aware that the Secretary represented to Congress
24 that the machines were -- in Georgia are secure because they
25 have seals on them and there's never been an instance of a

1 broken seal? Have you heard that before?

2 **A.** What are the dates again?

3 **Q.** It is November of 2021 is the actual --

4 **A.** Since I was not aware of his testimony specifically -- I
5 might have been aware at the time. I'm not aware of the
6 specifics of what he said, but I'm willing to read.

7 **Q.** But you are aware, in fact, that there have been reports,
8 including in the November 2020 election, of machines with
9 broken seals; right?

10 **A.** I have heard claims of that, of things with broken seals.
11 I have heard -- that is one of the situations we have to deal
12 with here, which goes back to the video you just showed. We
13 were awash in misinformation and disinformation.

14 **(Reporter asked for clarification.)**

15 THE WITNESS: The vast majority of claims were false,
16 so in a generalized sense, that is probably referring to -- and
17 also, I'm not aware of hearing about them in a deployed
18 election, those kind of things. Again, I haven't seen the
19 testimony. I don't know the context.

20 BY MR. CROSS:

21 **Q.** All right. Flip to Tab 41, if you would, please.

22 **A.** And that is in this one. Okay.

23 **Q.** Yeah, the exhibit binder.

24 MR. BELINFANTE: Which number?

25 MR. CROSS: Tab 41. This is Plaintiffs' Exhibit 104.

1 BY MR. CROSS:

2 Q. And you'll see that Exhibit 104 is an email that comes in
3 from Clinch County, Georgia, on July 9th of 2020.

4 Do you see that?

5 A. Yes.

6 Q. And Clinch County, that is a county here in Georgia;
7 right?

8 A. Yes, sir.

9 Q. And the report here comes from, it looks like, Laina
10 Ballance who was identified as the Clinch County election
11 supervisor.

12 Do you see that?

13 A. Yes, sir.

14 Q. And she writes, my tech is doing L&A testing and
15 discovered that two of our BMD's election data seals were
16 missing.

17 Do you see that?

18 A. Yes, sir.

19 Q. She asked, do we need to send these back to be resealed?

20 Do you see that?

21 A. Yes, sir.

22 Q. And then Mr. Barnes responds the same day, July --

23 MR. BELINFANTE: Objection, Your Honor. Sorry.

24 Counsel is reading hearsay into the record, and we would object
25 to Linda [sic] Ballance's portion of the email as hearsay from

1 a third party.

2 MR. CROSS: First, Your Honor, it is a business
3 record, also public record because it would be subject to FOIA
4 or ORR. This is coming directly from the election supervisor
5 to Mr. Barnes. And as we have heard from Mr. Beaver, from
6 Mr. Barnes himself, from Mr. Germany, that Mr. Barnes' job is
7 to oversee and manage this type of thing. This is right within
8 his official responsibilities, and, of course, he responds in
9 that respect.

10 So I think we have laid the foundation that this is a
11 business record.

12 MR. BELINFANTE: We're not objecting to Mr. Barnes'
13 portion of the email. We would be -- we are objecting to
14 Ms. Ballance's, as she could be called to testify, and -- and
15 so it wouldn't be hearsay.

16 THE COURT: Well, I don't know whether it is true or
17 not, but she is obviously -- Exhibit 104 can be admitted for
18 the purpose of this problem, whether it was fully true or not,
19 was brought to the attention of Mr. Barnes. And she's asking
20 the question. It really doesn't matter whether it is -- it
21 is -- they were missing or in some other spot.

22 But the point here is that there was a concern, it is
23 raised, she wrote to Mr. Barnes, and so it is admitted with an
24 understanding that there might be some other explanation for
25 the missing data seal.

1 MR. CROSS: Your Honor, I apologize. I should have
2 made this easy for you. 104 is already in. It is already in
3 evidence. Sorry.

4 MR. BELINFANTE: My apologies then, Your Honor.

5 THE COURT: All right.

6 MR. CROSS: I was testing Josh. He didn't remember
7 either. He didn't remember it either.

8 THE COURT: You were testing me too.

9 MR. CROSS: Sorry, Your Honor.

10 THE COURT: That's all right.

11 BY MR. CROSS:

12 **Q.** If we come back to Exhibit 104, you'll see that Mr. Barnes
13 responds that same day; right?

14 **A.** Yes, sir.

15 **Q.** And do you recall that July 9th of 2020, coincides with a
16 primary that was happening in the state at that time?

17 **A.** That would track, yes, sir.

18 **Q.** And in Mr. Barnes' response, he writes back, no, just
19 please put your own seal on the equipment and document the seal
20 number attached.

21 Do you see that?

22 **A.** Yes, sir.

23 **Q.** Have you seen this before? Was this ever flagged for you?

24 **A.** No, sir.

25 **Q.** Have you ever seen any reports coming in from counties

1 when they were preparing for elections or during or after
2 elections where seals were broken or missing on election
3 equipment in Georgia?

4 **A.** In a specific way of a, here is a specific county doing
5 this, no. But there is always generalized conversations that
6 there is no such thing as a perfect election ever. We have
7 thousands of poll workers, elections workers. And are they
8 going to forget things sometimes? Are they going to move and
9 catch a seal on something and snap it?

10 That is the reality of running an election in 159 counties
11 with thousands of people, so this is not unexpected. Of
12 course, you always want to document it, which is probably what
13 Michael is saying here. Document the seal number, we'll look
14 at it when he gets back. I don't know what was on --

15 THE COURT: All right. You're getting faster and
16 faster as this conversation is going on.

17 THE WITNESS: I apologize again.

18 THE COURT: That's all right.

19 THE WITNESS: Like I said on the front end, that is
20 what happens when I start going.

21 I don't know what might have been done after the fact
22 on this, but this is not -- this is sort of -- I work -- I have
23 talked to people in elections around the country. This is kind
24 of -- if you had 100 percent of your seals done the whole time
25 and it was perfect, that would raise a flag to me, so --

1 because that -- I think somebody is probably not telling the
2 truth.

3 But the reality is, this is not something I would be
4 surprised to see. You always want people to do it perfect and
5 do it right.

6 BY MR. CROSS:

7 **Q.** And so from your perspective, Mr. Barnes' response to just
8 put another seal on it and use the machine, that is not
9 inappropriate? That's --

10 **A.** Because I don't know if it is -- I don't know if this is
11 pre or post L&A, or if he might have -- I don't know how it was
12 all handled, so I couldn't say for certain.

13 **Q.** Fair to say his response doesn't trouble you?

14 **A.** Not really, no.

15 **Q.** Let's pull up Tab 10, Plaintiffs' Exhibit 160.

16 **A.** Tab 10 for me on the screen or --

17 **Q.** Yes.

18 Do you recognize Plaintiffs' Exhibit 160?

19 **A.** It says Exhibit 4 on my page, so I don't know if that
20 is -- okay. Bottom it says -- okay. I got 160. I got it.

21 **Q.** Do you see at the top there is a Tweet that you posted?

22 **A.** Yes.

23 MR. CROSS: Your Honor, we offer Exhibit 160 into
24 evidence.

25 THE COURT: Any objections?

1 MR. BELINFANTE: Your Honor, our objection would only
2 be for the Tweets after Ms. Marks on the second page. I don't
3 know who these other folks are. The others appear to be
4 parties or witnesses who we expect to testify --

5 THE COURT: What is --

6 MR. BELINFANTE: -- for Mr. Cross.

7 MR. CROSS: And that's fine, Your Honor. We're --
8 I'm sorry.

9 THE COURT: Is there an exhibit number?

10 MR. CROSS: It is Exhibit 160. It is Tab 10 in your
11 binder. And we're not offering -- the ones that Mr. Belinfante
12 identified, we're not offering those for the Court to consider
13 or rely on. They are just part of the thread.

14 THE COURT: So you're saying it is Exhibit 10?

15 MR. CROSS: It is Exhibit 160, and it is Tab 10 in
16 your binder.

17 THE COURT: I'm sorry.

18 What pages of this are you actually asking me to rely
19 on?

20 MR. CROSS: It is --

21 THE COURT: Page 1 or just the interaction between
22 Ben Adida and --

23 MR. CROSS: The only thing that I was interested in
24 was Mr. Sterling's Tweet, then the Ben Adida Tweets. That's
25 the only thing that we're offering.

1 THE COURT: All right. Well, it is admitted for --
2 with that limitation.

3 MR. BELINFANTE: Your Honor, we would ask -- our --
4 we would say that given that the others on here are either
5 parties or counsel or witnesses we expect to testify, we would
6 say the whole thing should come in up to Ms. Marks' Tweet on
7 the second page. And so starting from Doug Patterson down,
8 that is the part -- and I'm sure the Court wouldn't give it
9 much weight anyway, but that's the part we would say is
10 hearsay, and there doesn't seem to be disagreement on that.

11 MR. CROSS: That's fine.

12 THE COURT: Okay. All right. That's fine as long as
13 counsel agree.

14 MR. BELINFANTE: Thank you, Your Honor.

15 MR. CROSS: All right.

16 BY MR. CROSS:

17 **Q.** Talking a little more about Coffee County, you're aware
18 that in November of 2020 that then-election supervisor Misty
19 Hampton was involved in a video that went up on YouTube from
20 inside the elections office; right?

21 **A.** Yes, sir.

22 **Q.** And in that video, there was a Post-it note that had
23 something written on it; right?

24 **A.** A password to something, yes.

25 **Q.** Right. And what the Secretary of State's office concluded

1 was that it was a password for the Coffee County EMS server;
2 right?

3 **A.** I think the investigator said that. I sort of took it on
4 face value of that.

5 **Q.** Okay.

6 MR. CROSS: Let's -- Exhibit 495, Tony.

7 **(Playing of the videotape.)**

8 BY MR. CROSS:

9 **Q.** We just played a portion of it.

10 Does this look like a portion of the video that you have
11 seen from Coffee County where Ms. Hampton purports to
12 demonstrate how the system can alter votes?

13 **A.** Yes, sir.

14 MR. CROSS: Your Honor, we move Exhibit 495 into
15 evidence.

16 MR. BELINFANTE: No objection.

17 THE COURT: It is admitted.

18 MR. BELINFANTE: Other than our other, but I guess --
19 Your Honor, could we just have a continuing objection so
20 we're -- on the Coffee County matters?

21 THE COURT: Sure.

22 MR. BELINFANTE: Okay. Thank you, Your Honor.

23 MR. CROSS: And can we get clarity? Is it --

24 THE COURT: Is it all on relevance, or is it on some
25 other --

1 MR. BELINFANTE: It is on what we made during -- was
2 it Mr. Germany's testimony where we had a brief legal argument
3 here? Your Honor has already ruled on it. It is just so that
4 every time it comes up we don't have to --

5 THE COURT: And I just didn't remember what it was
6 based on.

7 MR. BELINFANTE: That's right. It was relevance.

8 THE COURT: Thank you.

9 MR. BELINFANTE: Thank you.

10 BY MR. CROSS:

11 **Q.** Do you recall that Eric Chaney is visible in that video
12 that we just --

13 **A.** I believe that the -- a member of the board -- I recall
14 him being somewhere involved in the video, yes.

15 **Q.** And Eric Chaney, you understand at the time, was a member
16 of the Coffee County Election Board; right?

17 **A.** Yes, sir.

18 **Q.** And your office -- Secretary's office, I should say,
19 opened an investigation into that video and some related
20 matters around that time; right?

21 **A.** I think -- I don't remember the exact nature. It was
22 this, plus, I think, coming into November, their failure to
23 certify their election properly. I think they made it into a
24 single case, but I can't recall exactly.

25 **Q.** In some of the -- some of the investigators from your

1 office, Frances Watson, for example, Investigator Blanchard,
2 are you aware they actually went to Coffee County and met with
3 Ms. Hampton and others?

4 **A.** Yes, sir.

5 **Q.** And you're aware that Ms. Hampton was uncooperative and
6 combative in that investigation; is that fair?

7 **A.** That is a fair statement, sir, yes.

8 MR. CROSS: All right. Can we pull up Exhibit 143?

9 THE WITNESS: Is that in my binder or is that a
10 video?

11 BY MR. CROSS:

12 **Q.** I'm sorry?

13 **A.** Is that in the binder as well, or is that --

14 **Q.** Yeah, if you go to Tab 15. And it is on the screen if
15 that is easier for you.

16 **A.** I like paper.

17 **Q.** I'm with you.

18 Do you recognize Exhibit 143 as a customer notification
19 that Dominion sent out to counties in Georgia on May 6, 2021?

20 **A.** Yes, sir.

21 **Q.** And part of the service that Dominion provides the State
22 with respect to the voting system is to send out these types of
23 notifications to the counties that use the equipment from time
24 to time; is that fair?

25 **A.** When appropriate, yes.

1 Q. When appropriate.

2 MR. CROSS: Your Honor, we move Exhibit 143 into
3 evidence.

4 MR. BELINFANTE: I understood this was already
5 admitted into evidence.

6 MR. CROSS: Oh, was I -- I know we brought it up. I
7 didn't know if we --

8 MR. BELINFANTE: Yeah.

9 THE COURT: Well, in case it wasn't --

10 MR. CROSS: It is in now.

11 THE COURT: -- it is now.

12 MR. BELINFANTE: Yes. I believe, Your Honor, we had
13 made an objection on hearsay from a third party, but I thought
14 the Court had admitted it subject to -- perhaps subject to the
15 objection, but it had been admitted either way.

16 THE COURT: I think it had been, Dominion functioning
17 as an agent of the State, and these were the notices.

18 MR. BELINFANTE: Yeah. I'm being told the Court had
19 put it aside, and so I think --

20 MR. CROSS: That's what I thought.

21 MR. BELINFANTE: -- we were waiting to see what it
22 was.

23 MR. CROSS: Right.

24 MR. BELINFANTE: So our objection would be that it is
25 hearsay of a third party. We tried to get Dominion folks to

1 testify, and we were told we couldn't, so we would object on
2 that ground as well.

3 MR. CROSS: As we've indicated before, Your Honor,
4 they have represented to the Court on multiple times Dominion
5 is their agent. You heard from Mr. Beaver, I think Mr. Barnes,
6 and Mr. Germany that they rely specifically on Dominion for
7 this type of purpose. Mr. Sterling just testified to the same,
8 so this is --

9 THE COURT: I think it is appropriate since they
10 obviously were made an agent for the security purposes
11 according to Mr. Beaver.

12 MR. CROSS: Right. So is 143 in, Your Honor?

13 THE COURT: Yes, it is admitted.

14 MR. CROSS: All right. Let's flip to Tab 16, if you
15 would, sir.

16 Tony, if you want to pull up Exhibit 78.

17 BY MR. CROSS:

18 Q. And let me just ask you, Mr. Sterling, do you recall that
19 in May of 2021, the Secretary's office opened an investigation
20 into whether there had potentially been access to any of the
21 election equipment in Coffee County?

22 A. At the time, I was not aware, but I am now. At some
23 subsequent time to May '21, I was aware of it, yes.

24 Q. So you are aware -- you're aware now that that
25 investigation occurred in May of 2021, but you were not aware

1 at the time; is that --

2 **A.** No, sir.

3 **Q.** Okay. And one of the things that you understand since
4 learning about that investigation is that it was assigned to
5 agent -- or to Investigator Blanchard; right?

6 **A.** Correct.

7 **Q.** And you understand that what Mr. Blanchard did was to
8 reach out to James Barnes who was the then-election supervisor
9 in Coffee County; right?

10 **A.** As I understand it, yes, sir.

11 **Q.** And he asked Mr. Barnes whether there had been potential
12 access to the equipment; right?

13 **A.** I don't know what he specifically asked him. I think it
14 was if Cyber Ninjas had done anything along those lines that he
15 was aware of.

16 **Q.** And the Secretary's office was aware in May of 2021 that
17 the Coffee County Elections Office had video surveillance;
18 right?

19 **A.** I don't know the answer to that.

20 **Q.** Well, certainly the Secretary's office was aware that the
21 counties around the State have video surveillance set up?

22 **A.** Yes.

23 **Q.** And do you know whether Mr. Blanchard or anyone else
24 looking into this asked the county in May of 2021 whether they
25 still had video surveillance from January of 2021?

1 **A.** For this one, I can't specifically speak to it because
2 there was three separate incidents. If you want talk about we
3 had the initial one we just discussed with the video and the
4 certification, then we had this business card, and then we
5 subsequently learned about the SullivanStrickler situation.

6 So those are three separate things, and I know in the
7 SullivanStrickler one, they specifically asked about video
8 stuff to their law enforcement counterparts who said, we hold
9 only for a certain amount of time.

10 So it didn't exist when they asked for it from the law
11 enforcement side. Whether they asked for this one, I do not
12 know the answer to that.

13 **Q.** If you look here, you can see that the email here is --
14 the exchange is on May 11th of 2021.

15 Do you see that?

16 **A.** Yes, sir.

17 **Q.** The Secretary's office did not do any further
18 investigation into whether there was access to any of the
19 voting equipment beyond May 11, 2021; right?

20 **A.** For this particular side, it is my understanding -- again,
21 subsequent to asking about it due to this -- that essentially
22 there was nothing -- nobody, for lack of a better word, fessed
23 up. They wouldn't talk to anybody. There was no other -- they
24 told me at the time that we couldn't find any evidence or trail
25 to go with at that point, so I think it's just sort of --

1 THE COURT: Just you've got to go a little slower
2 because I'm not catching it and I --

3 THE WITNESS: At that point, we were told there
4 was -- our office was internally told -- and I learned of this
5 subsequently and I couldn't say when -- there was really no
6 evidentiary trail to try to track on the Cyber Ninja specific
7 investigation.

8 So I don't even -- I assume -- I don't know if it had
9 a case number assigned to it or not, but that was my
10 understanding of how that particular one went, which was now
11 the second time something around Coffee County for the 2020
12 election cycle had come up or post -- during 2020 and post
13 2020, and then the third one, which is the -- obviously, the
14 breach or the unauthorized access we discovered later on.

15 BY MR. CROSS:

16 **Q.** The investigation that was opened in December of 2020 into
17 the YouTube video and some related things, do you recall that
18 that was also assigned to Investigator Blanchard?

19 **A.** Yes, sir.

20 **Q.** So Investigator Blanchard had that, and he also had this
21 assigned to him on May 11, 2021; right?

22 **A.** Yes, sir. Because our investigators generally have, for
23 lack of a better word, routes, so that is kind of his area
24 physically.

25 **Q.** Flip to Tab 14, if you would, please, sir.

1 THE COURT: What was the number of this one?

2 MR. CROSS: The exhibit number?

3 THE COURT: The one we have just been looking at,
4 what was the tab number?

5 MR. CROSS: Let me get back to it.

6 THE WITNESS: That was 16.

7 MR. CROSS: 16.

8 THE COURT: Thank you.

9 And the next one is?

10 MR. CROSS: The next one is Tab 14.

11 BY MR. CROSS:

12 **Q.** And Tab 14 is labeled as Plaintiffs' Exhibit 40.

13 And, Mr. Sterling, do you recognize this as the official
14 investigative report that Investigator Blanchard prepared on
15 the investigation that was begun December of 2020?

16 **A.** Yes, sir.

17 **Q.** And the way the Investigations unit works is when they
18 have an investigation like this, they prepare a final report
19 that gets presented to the SEB; is that right?

20 **A.** I don't know if every open case is eventually presented to
21 the SEB. But if they get to investigative summary and filings,
22 that would be, I believe. That is how that would work.

23 MR. CROSS: Your Honor, we move Exhibit 40 into
24 evidence.

25 MR. BELINFANTE: No objection.

1 THE COURT: It is admitted.

2 BY MR. CROSS:

3 **Q.** Mr. Sterling, as part of the investigation the Secretary's
4 office conducted into the breaches in Coffee County in January
5 of 2021, just yes or no, do you know whether anyone looked into
6 why Mike Lindell flew into Coffee County on the night of
7 February 26th of 2021?

8 **A.** I don't know.

9 **Q.** You just don't know one way or the other whether anybody
10 looked into that?

11 **A.** I don't know one way or the other, sir.

12 **Q.** Do you agree that the main thing that a bad actor may want
13 to do to affect elections in Georgia is simply to just cause
14 chaos?

15 **A.** That would be a -- if you're -- it depends on the
16 intentions of a bad actor. A chaos actor would be something
17 that could be done, yes. That could be a goal.

18 **Q.** Right. And, in fact, one way they could do that would be
19 to sort voter registration numbers, assuming they could get
20 access to that information, and then that would affect -- that
21 would cause chaos at the poll sites on election day; right?

22 **A.** I believe I said that in my deposition.

23 **Q.** Right. I think you said that that would be a brilliant
24 attack to do.

25 Do you recall that?

1 **A.** I believe that is -- yes.

2 **Q.** And specifically because it would cause chaos on election
3 day; right?

4 **A.** Yes, sir.

5 **Q.** The vulnerabilities that Dr. Halderman identified in his
6 July 2021 report, you agree that those vulnerabilities should
7 be mitigated; right?

8 **A.** Where possible, yes.

9 **Q.** And you're aware that CISA reviewed those vulnerabilities
10 and issued an advisory confirming that the vulnerabilities
11 exist; right?

12 **A.** Yes, sir.

13 **Q.** Through the CISA process, did you or, to your knowledge,
14 anyone else with the Secretary's office have any communications
15 with CISA while they were doing their assessment of
16 Dr. Halderman's findings?

17 **A.** If memory serves, I don't believe the CISA process allows
18 for us to have any direct input into that. I believe Dominion
19 is allowed to have some level of input, but I don't fully know
20 the federal process well enough to really opine on how that is
21 supposed to work.

22 **Q.** And do you know -- are you familiar with someone named
23 Geoff Hale?

24 **A.** The name rings a bell, but I could not tell you why.

25 **Q.** Do you recall that he had an official role at DHS at the

1 time that this process was --

2 **A.** Now that you said that, yes.

3 **Q.** And do you recall Kim Weiman also had a role at DHS at
4 this time?

5 **A.** More of a communications role, but yes.

6 **Q.** And you spoke with Mr. Hale and Ms. Weiman during the CISA
7 process while they were evaluating Dr. Halderman's findings;
8 right?

9 **A.** I don't know.

10 **Q.** You just don't know one way or the other?

11 **A.** I don't know one way or the other. I can't recall if I
12 did or not. I talked to Ms. Weiman. She is a former Secretary
13 of Washington State, a Republican, and I talked to her at
14 NASED.

15 I see her at things, and I would have probably seen her --
16 I don't know when -- I can't remember exactly when the dates
17 were around this, so there's different meetings I would be at
18 where she would be.

19 So I could have talked to her around it. I don't know if
20 I talked to them about it. I think -- now, thinking about it,
21 I may have talked -- I don't remember talking to Hale. I think
22 I might have talked to Kim about it, Ms. Weiman.

23 **Q.** And you urged Ms. Weiman not to advise against the use of
24 QR codes; right?

25 **A.** I believe so, yes. That would make -- that would be

1 something I would say, yes.

2 **Q.** Is there anything else you recall discussing with CISA?

3 **A.** Essentially, I remember trying to understand the rationale
4 of how they were reviewing these things. Because, as it was
5 explained to me, you have to essentially pretend like there is
6 no mitigation factors of people in processes and procedures,
7 and then look at just the software itself.

8 So that is my understanding is that you are just looking
9 at a standalone thing, basically nakedly standing there. And I
10 think I might have expressed my frustration with that being the
11 process in and of itself.

12 **Q.** Do you know whether anyone at the Secretary's office has
13 ever discussed Dr. Halderman's findings or the CISA advisory
14 with Dominion?

15 **A.** Yes.

16 **Q.** And how did those discussions usually happen? Is it
17 email? Text messages? All manner of communication?

18 **A.** Phone calls. Some emails, I'm sure. I mean, yeah. I
19 mean, or in-person discussions.

20 **Q.** Have you personally ever had any communications, such as
21 by email, with anyone at Dominion about Dr. Halderman's
22 findings or the CISA advisory?

23 **A.** I know if I have talked about it. I don't know if there
24 are any emails unless it has been in the production, so --

25 **Q.** Would it surprise you to learn that the State has not

1 produced a single communication, not one, between the
2 Secretary's office and Dominion concerning Dr. Halderman's
3 findings, the CISA advisory?

4 **A.** No.

5 **Q.** Go to Tab 38, if you would, please, sir.

6 THE WITNESS: Your Honor --

7 BY MR. CROSS:

8 **Q.** Mr. Sterling, did you have --

9 THE WITNESS: I was going to ask Your Honor. I'm not
10 quite sure how to ask this, but comfort break is the word I'm
11 looking for.

12 THE COURT: Of course. All right. Let's take a
13 five-minute break.

14 THE WITNESS: Thank you.

15 COURTROOM SECURITY OFFICER: All rise. Court is in
16 recess.

17 **(A brief break was taken at 3:37 PM.)**

18 THE COURT: Have a seat. You may proceed.

19 MR. CROSS: Yes. Thank you, Your Honor.

20 And one procedural thing -- I'm going to do this only
21 because I have so much affection for Mr. Belinfante. We're
22 going to withdraw Exhibit 160.

23 THE COURT: Which one was that?

24 MR. CROSS: It was the Tweet thread because I realize
25 we messed up trying to print that, and it doesn't have what I

1 wanted in it, so we'll just withdraw it. Sorry for the
2 confusion.

3 THE COURT: That is all right.

4 MR. CROSS: I'll make that simple.

5 BY MR. CROSS:

6 **Q.** Mr. Sterling, I just have a couple of more things.

7 The Secretary's office, including the Secretary himself,
8 including yourself, frequently have referred to the plaintiffs
9 and their experts as election deniers; right?

10 **A.** They are cut from the same cloth, in our opinion, yes.

11 **Q.** And Mike Hassinger is a spokesperson for the Secretary of
12 State; right?

13 **A.** I'm sorry.

14 What, sir?

15 **Q.** Mike Hassinger, he's a spokesperson for the Secretary of
16 State?

17 **A.** Yes, sir.

18 **Q.** And one of the things that he said is -- talking about our
19 experts in this case -- if the Ph.Ds don't like being put in
20 the same category as the pillow salesman, tough noogies, they
21 should stop saying similar things; is that right?

22 **A.** Yes, sir.

23 **Q.** Do you know who made the decision to respond to
24 Dr. Halderman's findings by characterizing him and the
25 plaintiffs as election deniers?

1 **A.** No, sir, I can't say specifically who. It was an internal
2 communications decision.

3 Q. So you weren't involved in whatever discussion occurred
4 when that decision was made?

5 **A.** I likely was involved at some level, but again, we have --
6 the communications side is not something I'm directly in charge
7 of making the decisions of the directions on those things.

8 Q. Fair to say that the people speaking on behalf of the
9 Secretary would not make those statements without his knowledge
10 and authorization?

11 | A. Fair to say that.

12 Q. Okay. All right.

13 MR. CROSS: Let's pull up Plaintiffs' Exhibit 127,
14 Tony.

15 THE WITNESS: Which tab is that, sir?

16 MR. CROSS: It is not a tab, so you're going to have
17 to look at the screen. Sorry.

18 Do we have another hard copy of this, Jenna? We had
19 it earlier.

(There was a brief pause in the proceedings.)

21 THE WITNESS: I can watch on the screen. That's
22 fine.

23 BY MR. CROSS:

24 Q. Let me just ask you: Do you recognize the document
25 entitled here Fortalice Solutions Incident Response dated

1 February 26 of 2021?

2 **A.** No, sir.

3 **Q.** Have you ever had any involvement with any of the security
4 assessments done by Fortalice on behalf of the Secretary's
5 office?

6 **A.** I have heard after-actions on some of them, yes. I'm not
7 sure if it is all of them, but I'm aware of them as a former
8 vendor of ours.

9 **Q.** As you sit here, you don't have any knowledge -- any
10 recollection about a Fortalice incident response that occurred
11 on or around February 26 of 2021?

12 **A.** Not specifically, no. If I read more about the details, I
13 might remember, but I don't recall this right now.

14 **Q.** Let me hand you this copy so you can flip through it.

15 MR. CROSS: May I approach, Your Honor?

16 BY MR. CROSS:

17 **Q.** Exhibit 127, just flip through it, if you would, and tell
18 me if it rings any bells.

19 THE COURT: What tab was on this?

20 MR. CROSS: It is not a tab, Your Honor.

21 THE WITNESS: No, sir.

22 BY MR. CROSS:

23 **Q.** There is no insight? Nothing you can offer? You don't
24 have any awareness of this as far as you know?

25 **A.** Yes, sir.

1 **Q.** That's fine.

2 Are you aware that one of your lawyers in this case and a
3 consultant that works for you -- and just answer this yes or no
4 if you would -- inspected source code underlying
5 Dr. Halderman's work in this case recently?

6 **A.** I know there's an expert. I don't know exactly what he
7 has or hasn't done.

8 **Q.** Are you aware that your counsel in this case told the
9 Court for a period of years that the Secretary's office did not
10 need to examine the source code underlying Dr. Halderman's
11 report until trial in this case? Have you ever heard that
12 before?

13 **A.** I don't believe so, no.

14 **Q.** So as you sit here, you don't have any insight into who
15 made the decision that examining the source code for
16 Dr. Halderman's work is useful only for trial? You don't know
17 who decided that?

18 **A.** No, sir.

19 **Q.** And as the COO of the office, does it surprise you that no
20 one in your office thought it might be useful for election
21 security purposes to understand how his source code worked back
22 in July of '21 when the report came in?

23 **A.** Again, it depends on how you characterize it. So it is
24 not that surprising to me on the fronts that this is a
25 litigation environment, and I'll leave it at that for right

1 now. Yeah.

2 **Q.** Is it your understanding as the chief operating officer of
3 the Secretary's office that exploiting the vulnerabilities
4 Dr. Halderman has identified since July of '21 would require an
5 extremely high level of sophistication?

6 **A.** Well, it depends on which ones. Some require higher
7 levels of sophistication than others. But all of them require
8 physical access and limited time windows, yes.

9 **Q.** And is it your belief that your typical voter couldn't go
10 in on election day and hack a machine to alter votes in a few
11 minutes? Do you believe that is not possible?

12 **A.** I believe it is potentially possible, but we have systems
13 and personnel and processes in place that deal with, you know,
14 protective processes, detective processes, and recovery
15 processes across the board. So I think it would be difficult
16 to do it in such a way as to be undetectable and
17 nonrecoverable.

18 But yes, anything that relies on a computer could
19 potentially have somebody do something if they had enough
20 sophistication and training to do something along those lines.

21 But again, most of the things outlined by John Halderman
22 is -- would require -- you can get one BMD at a time. They are
23 not scalable other than one goes to the EMS, and that
24 particular one would require an inside actor.

25 And if it is an inside actor who is a bad actor, it

1 doesn't matter which system you have at that point because they
2 are all vulnerable.

3 THE COURT: It doesn't matter what?

4 THE WITNESS: What system you have. Because if you
5 have an inside actor who has access to an EMS, whether it is an
6 hand-marked paper EMS, a punch card EMS, a Scantron EMS, a BMD
7 EMS -- if you have an insider, all of the threats go across the
8 board at that point. It is regardless of what kind of system
9 you have. That is the only scalable one in the Halderman
10 report, as I recall it.

11 BY MR. CROSS:

12 **Q.** So again, you don't dispute that a voter could walk in on
13 election day in Georgia in the span of a few minutes, hack a
14 BMD so that it would alter votes for folks voting after that
15 voter? You don't just --

16 **A.** If they had perfect knowledge in the time window, had
17 access to every ballot style, understood what those were, knew
18 the coordinates beforehand -- I mean, there's several stages
19 you would have to go through, and it would be highly difficult,
20 especially to do it in a way --

21 The way that a polling location is supposed to be set up,
22 you have to allow for the privacy of the voter, but there has
23 to -- you have to have the ability of the poll manager and poll
24 workers to kind of see the actions taking place.

25 Most things -- I have been in a poll location where

1 somebody hit the table too hard and the BMD shut down,
2 basically said something has happened. There is a report that
3 goes off that something is trying to happen. If you open one
4 of the back doors, it would be detectable.

5 It is just very difficult to do this in a -- you might be
6 able to affect a BMD. You would be just as effective taking a
7 hammer and hitting the BMD to make it stop, basically.

8 But to switch votes in an undetectable way that every
9 subsequent vote after that would not be verified by the voter,
10 again you're taking lots of things into account at that point
11 that wouldn't be noticeable. On election day especially, in
12 early voting as well, especially now we have added subsequent
13 to the -- this report a -- during the election -- open election
14 time parallel monitoring.

15 MR. CROSS: Your Honor, I'll object -- I'm going to
16 object. He's getting into information that has never been
17 disclosed in discovery, and he's also far afield of the
18 question.

19 THE WITNESS: You asked me if somebody could do it,
20 and I said yes, but they would also be detected, which is part
21 of the systems we have and processes to protect the system
22 overall.

23 BY MR. CROSS:

24 Q. Okay. And so just we're clear, what you testified to,
25 everything you just articulated, you think would be required to

1 do it, and you think it would be detected if it occurred?

2 **A.** In most situations, I believe so. Is it possible? I
3 couldn't say for certain because it would be very difficult. I
4 haven't seen anybody actually do it. We have seen no reports
5 of it actually happening anywhere in America.

6 **Q.** You spoke a little bit ago about causing a bad actor might
7 seek to cause chaos in an election.

8 Why would chaos matter if it occurred on an election day?

9 **A.** Because chaos generally begets people mistrusting outcomes
10 of elections.

11 **Q.** Chaos can also reach a point where the State might not be
12 able to certify the election.

13 Is that possible?

14 **A.** It depends on the chaos and depends on the recovery,
15 depends on the response. I couldn't say for certain.

16 I mean, one of the things that I'm most worried about is a
17 rogue county not -- refusing to certify and us having to go
18 to --

19 THE COURT: One of the things you're most concerned
20 about, what?

21 THE WITNESS: A rogue county deciding not to certify
22 their election in any one of the states of the union.

23 I was at a conference just on Friday talking about
24 this -- actually, not Friday. I had to come back early because
25 I thought I was testifying on Thursday -- discussing those

1 kinds of things.

2 There is lots of things that can cause chaos.

3 There's lots of things that can cause problems. There's lots
4 of people who get a benefit from their point of view out of
5 this, foreign actors, domestic terrorists across the board.

6 The vulnerabilities here I tend to see as much lower,
7 which is why I thought the voter registration system was a much
8 more vulnerable system we had previously that we've now
9 addressed in a very large way, in a much more secure way.

10 BY MR. CROSS:

11 **Q.** But you understand that -- you just mentioned a number of
12 different actors. It could be foreign actors, domestic actors.
13 It could be insiders. It could be voters.

14 Their entire intention to exploit this vulnerability could
15 be not to actually affect any votes, but to alter a BMD and
16 then deliberately ensure that it gets caught?

17 That is certainly a possibility; right?

18 **A.** That is a possibility, yes.

19 **Q.** And if that were to happen, if someone were to alter a BMD
20 on election day, and it were to be immediately detected by the
21 next voter, what statutory regime exists in the State to then
22 certify the outcome of that election?

23 MR. BELINFANTE: Objection. Two grounds. One, I
24 think we're getting pretty far afield from the actual
25 Anderson-Burdick case of whether a vote as cast is counted.

1 Two, Mr. Sterling is not a lawyer. I don't think he
2 can testify to the legal regime or statutory regime that
3 Georgia has to address a hypothetical situation like that.

4 MR. CROSS: Let me ask it differently.

5 BY MR. CROSS:

6 **Q.** As the chief operating officer, you have
7 responsibilities -- some level of responsibility for overseeing
8 elections in the State; is that right?

9 **A.** It depends on how you interpret the question because
10 counties run elections and the level of state involvement is --
11 seems to be at issue on occasion.

12 **Q.** And in the situation where a bad actor comes in, exploits
13 a vulnerability to alter votes, literally, the next voter who
14 comes along to that machine catches it, as you sit here, what
15 is your plan? What is the Secretary's plan for dealing with
16 that?

17 **A.** The normal plan would be they would notify the poll
18 manager. They would then test -- they would probably test that
19 machine. And normally, they would just take it out of service
20 as in any other situation that happened like that, and then
21 election voting would go on as normal.

22 **Q.** And so in a situation where a machine is actually
23 confirmed to be flipping votes, your plan is to simply take
24 that one out, assume that all the rest work fine, and continue
25 with the other 30,000 minus one BMD and certify an election?

1 That's the plan?

2 **A.** Well, since they are not connected to each other, one
3 doing one thing has nothing to do with if the other one is
4 doing anything. And if nobody is detecting it, then if there
5 is no -- if people are examining their ballots and they are
6 putting it in there, even if it is only 10 or 20 percent,
7 enough times, it would be noticed because the vast majority of
8 voting in Georgia is done in person on a BMD.

9 **Q.** And what is the Secretary's plan if that happens on 20
10 BMDs in 20 counties on election day?

11 **A.** Those --

12 **Q.** Pull those 20 BMDs?

13 **A.** Pull those 20 BMDs, and then you would probably have to do
14 a deeper investigation to see if something specific happened or
15 if it was a programming error that was somehow, you know, done
16 repeatedly in multiple counties. I doubt that would happen.

17 I mean, we have seen situations where votes were not cast
18 properly because programming was done wrong because the same
19 thing can happen with a hand-marked paper ballot.

20 If something happened like in DeKalb County where they had
21 a cascading set of efforts that were human error on
22 redistricting. Then a person withdrew from the race, and not
23 all the scanners were calibrated properly to look for three
24 votes -- three candidates instead of four candidates.

25 Same thing happened on an ES&S machine in Northumberland,

1 Pennsylvania, where the program was just done incorrectly. And
2 that could be -- and that was, I believe, on -- that was a BMD
3 or the way they had set the ballot positions on the hand-marked
4 as well. I can't remember specifically on that.

5 But yes, you would take the suspect BMD out of service
6 would be the first and foremost thing you would do, and then
7 you would obviously make sure people review their ballots
8 before they go on to the other ones.

9 **Q.** Has the Secretary's office identified a threshold, a
10 tipping point to which enough BMDs are confirmed to be altering
11 votes on election day that you don't proceed with the election,
12 you don't certify the results?

13 **A.** What would happen then, if we saw a lot of that happening
14 and all over the place or in a particular county, at that point
15 you may move to other emergency procedures which would be use,
16 unfortunately, hand-marked paper ballots, or you wouldn't do
17 ballot activation codes because that is about encoding the
18 machines to produce the proper ballots. I got my note here.

19 COURT REPORTER: Read it.

20 THE WITNESS: Trying.

21 So you would take them out of service. And then,
22 obviously, you would have to look closely at it to make sure
23 nothing happened on the other ballots potentially in that
24 precinct or on the other ones because, again, it just depends
25 if it's early voting or election day voting. Election day

1 voting, they are programmed on the scanners to only accept the
2 ballots from those -- oh, sorry. The BMDs are programmed to
3 only do the ballots for that particular precinct, so you have
4 to be very specific.

5 Early voting is a different situation because the BMD
6 is programmed with every county ballot style, and these
7 scanners would be getting every -- could accept every ballot
8 style.

9 BY MR. CROSS:

10 **Q.** Fair to say the State does not have any written plan for
11 how to deal with this situation except for going to the
12 emergency hand-marked paper ballots as you just mentioned; is
13 that right?

14 **A.** If there was multiple situations like that?

15 Again, these things don't happen --

16 **Q.** Or even just one?

17 **A.** If it is just one, we have machines that go out, you take
18 them out of service. That is not unheard of. And again, if we
19 saw there is a programming error, that would be a situation.
20 We have seen programming errors on the first of day of an
21 election on early voting and had to go through and, you know,
22 make sure it was done properly. But that has its risks in and
23 of itself too.

24 **Q.** Mr. Germany, I'm sorry to interrupt. I'm asking a very
25 specific question.

1 **A.** Germany or Sterling?

2 **Q.** Oh, sorry. Sorry.

3 **A.** We don't look very much alike. My hair is much lighter,
4 and I'm a lot heavier.

5 **Q.** I had to interrupt both of you, so it was in my head.

6 Sorry. That is all it is.

7 Mr. Sterling, my specific question was: There is not a
8 written plan you can direct the Court to that says, step by
9 step, here is what we do if it is detected on election day or
10 an early voting that a BMD is altering votes whether it is a
11 glitch or a hack?

12 It could be either one. There is no written plan you
13 could walk --

14 **A.** I believe we have a written plan saying if you have a
15 situation with a BMD, whether it is flipping votes or
16 non-functionality, remove them from service. That is step one.

17 After that, it would escalate, and I don't -- I don't
18 think we have a written plan.

19 **Q.** It is --

20 **A.** I'm trying to go through my head to see if we do have a
21 written document. I don't think we do. We've had discussions
22 around what we would do in those situations, but I don't think
23 it is finalized because it is a hypothetical of several
24 different things.

25 And the things we've had to address recently, the more

1 likely scenarios we're worried about are potential shooters at
2 a location. These are things that -- when you -- we're about
3 balancing risks. Okay? And the risks of this from our point
4 of view is technically difficult and hard to do without being
5 detected, so it is pretty low overall.

6 But the risk of three guys getting together and saying,
7 I'm going to open fire at a minority polling location in
8 Georgia and then Mississippi and then in Texas, a lot higher.
9 How do we deal with those situations?

10 So we have -- I mean, I'm going to get far afield of your
11 question. I apologize. But there is not a written plan, as I
12 sit right here today. But do we have our common sense things
13 we do and the basics of if a BMD goes out? Yes.

14 **Q.** So you said that if there were a BMD where it was shown to
15 be not recording votes accurately, step one is to pull the BMD
16 out of service?

17 **A.** Yes.

18 **Q.** Okay. And so the voters who voted on that BMD in the
19 morning, they are just -- they are just out of luck for that
20 election?

21 **A.** Well, again, it would depend. It would depend. I mean,
22 if you said -- your hypothetical was they got detected
23 immediately, so we wouldn't have to worry about that, but we
24 wouldn't know that for certain.

25 **Q.** Is there a written plan that would say somehow you're

1 going to go back, identify all the voters who voted on that
2 BMD, and bring them back to vote?

3 You're going to alert them, you're going to find them on
4 election day.

5 Is there a plan that says --

6 **A.** On election day? No, there is not one around on election
7 day. Because, again --

8 **Q.** And you couldn't do that, could you, sir?

9 **A.** No. But the same thing, if there is a scanner that does
10 it, we wouldn't know that until after election day. We would
11 have to go back and get some of those people.

12 We have had situations before in North Georgia where
13 people voted in the wrong place, so they had wrong ballots.
14 And we've had to rerun an election twice because of that.

15 And again, it was human error based on programming and
16 redistricting. The biggest problem we have with any of these
17 systems is human error on the front end, regardless of the
18 system.

19 **Q.** Thank you.

20 THE COURT: Before we move on --

21 MR. CROSS: Sorry, Your Honor. I don't think -- I
22 did not move in Exhibit 494, which is the audio -- or the video
23 of Mr. Sterling in April of 2022 saying the Coffee County
24 breach did not happen. So we move that into evidence.

25 MR. BELINFANTE: Our only objection would be for

1 completeness. I think it was like two sentences. If there is
2 a larger video available, I know I've seen part of it
3 originally. We would not object to the larger context, and we
4 can work out how long that would be, if that pleases the Court.

5 MR. CROSS: Yeah, we can -- the rest of it I don't
6 think is relevant, but we're happy for completeness. You can
7 do that.

8 THE COURT: Before you sit down, just put your books
9 down for a second. All right? That is fine. You can all
10 agree on what -- the actual clip to be submitted because I
11 don't want to be sort of tag-teaming with all of you, and I
12 wanted to -- about this question, I just -- it is sort of a
13 follow-up from one or two of our preceding witnesses.

14 Did you -- I understood from prior testimony given
15 here that you had asked for Fortalice to prepare a review of
16 the Dominion system or some portion of it, but maybe it was --
17 and this was early on, and I think it was in particular related
18 to the Poll Pads.

19 THE WITNESS: I have a recollection of something
20 related to Poll Pads, but I can't remember exactly what it was
21 at this point.

22 THE COURT: Do you have, Counsel, that --

23 MR. CROSS: I'm pulling it right now, Your Honor.

24 THE COURT: -- from the last --

25 MR. CROSS: Yes.

1 Yeah. Can we pull, Tony, Exhibit 590? Go down to
2 the start of it.

3 We have a hard copy. We're going to hand you a hard
4 copy of this.

5 THE WITNESS: Thank you.

6 THE COURT: Okay.

7 THE WITNESS: Is there a question?

I'm not sure where I'm at right now.

9 THE COURT: That's quite all right.

10 EXAMINATION

11 BY THE COURT:

12 Q. I guess the first question is: Did you yourself ask for
13 the review of the Poll Pads or anything else that -- by
14 Fortalice?

15 **A.** This is now several years ago, so I'll try to put it in
16 the context of what I was probably thinking.

17 Q. I know it was.

18 **A.** The Poll Pad was the one part of the system that had some
19 kind of internet connectivity, so I was probably asking them to
20 review that.

Now, the Poll Pad as designed then versus the Poll Pad as deployed now are different.

23 Q. I understand that.

24 **A.** But yeah, I might have went to the -- our IT team. I

25 didn't say Fortalice. I might have said, get some smart people

1 to look at this and tell us how to make this as secure as
2 possible, something along those lines.

3 **Q.** Did anyone tell you -- share with you Fortalice's
4 evaluation of that or the rest -- the rest of the matters
5 covered by Fortalice's review -- initial review?

6 **A.** I honestly don't recall. I remember that subsequent to
7 this, we talked about using Merakis, which is a specific single
8 source to load the data, all the voter files onto each one of
9 the ones in each one of the counties. That was how we deployed
10 it at that time. I don't know if that came out of this review
11 as a -- you know, a best practice. I just remember that was
12 the outcome at the time.

13 **Q.** Well, I guess what I'm trying to find out is: There was
14 some initial Fortalice review of a number of different matters
15 relating to risks.

16 Did anyone share that report with you that was done in
17 November of '20, I think it is?

18 **A.** And November of '20, which would have been in the middle
19 of the election time, I assume?

20 **Q.** November 27, 2019. But it, you know -- it is not like it
21 would die in the next three months, but --

22 **A.** Well, Your Honor, I understand because, obviously, this is
23 now come of this, and they may have at the time. I don't
24 recall the specifics of it if they did, and it might have
25 easily been somebody walking me through it rather than me

1 reading it because me reading it probably wouldn't have been
2 very effective because I am not the most technical human alive,
3 so -- but the main thing we were looking at, I don't recall
4 them looking at BMDs and stuff. We had tried -- we had started
5 a process to work with the Cyber Center in Augusta, and then
6 COVID happened, and that never really got off the ground. We
7 were going to give them pristine set of equipment to go on and
8 that's still an ongoing discussion.

9 But I don't recall specifically me reviewing it. I might
10 have been briefed on it at the time so I could have a better
11 understanding. But most of my time at that point was otherwise
12 occupied in a great effort to defend the outcome of the 2020
13 election in Georgia.

14 **Q.** Well, did you receive reports from -- yourself from
15 Dominion as to what they were doing on security fronts?

16 **A.** I had several discussions on them about what that -- in
17 terms of upgrades, what is going to be moving forward, what
18 does the next thing look like. And again, most of these
19 things -- when we talk about cybersecurity, my biggest concern
20 at the time were things that were front-facing connected to the
21 internet, which would have been the voter registration system
22 and the Poll Pads because those have lots of attack potential
23 vectors.

24 When it came to the equipment itself, we knew it didn't
25 touch the internet, we knew you had to have physical access.

1 And again, one of the things that in order to do some of the
2 specific things -- and again, I'm not going to speak to this to
3 Dr. Halderman's or anything else.

4 When you build a ballot, Georgia has some of the most
5 complicated ballots in America. And building a ballot, we have
6 tens of thousands of them that are built every single time.
7 The most complicated is the primary ballot. The second-most is
8 the general election ballot. And in order to do any kind of --
9 if you gain physical access, you have to have already gotten --
10 the ballot has to have already been built, and most of those
11 are built, at the latest, around 70 days beforehand.

12 Then you have to know the exact coordinates you're going
13 for because the QR code is simply just mirroring the
14 coordinates. And even in a perfect environment, we have
15 mistakes that are made on doing these things.

16 So it is difficult to do it in an undetectable way because
17 you're having to go for specific precincts and specific polling
18 locations except during the early voting period.

19 **Q.** All right. I'm really -- I'm not -- that is really -- I
20 understand.

21 **A.** I'm trying to --

22 **Q.** I think what I am trying to understand is this, is that we
23 have had testimony in this court on one hand that Mr. Barnes --
24 Michael Barnes is not -- is not responsible for security in the
25 system, and at the same time that Mr. Beaver really said

1 that -- has testified that it is -- that Dominion was made
2 exclusively responsible for security.

3 And though we also have -- and then we've also had the
4 situation where it has been made clear by counsel that -- that
5 an initial evaluation done of Fortalice of security risks was
6 protected -- the State has asserted was protected by
7 attorney-client privilege.

8 So I'm just trying to find out who, first of all, the
9 bottom line would have been responsible for looking at security
10 issues under -- given those circumstances. And I don't have
11 the Secretary here, so I have to -- you are the one I have to
12 ask the question of.

13 **A.** I fully understand the rationale for the question, Your
14 Honor.

15 So again, there are several steps in the process to this.
16 So I'll start out with the fact that when we procured the
17 system, there were several things inside the RFP itself that
18 addressed security, and those were evaluated.

19 One of the members of our team -- on the evaluation team
20 was the CIO of the Georgia Technology Authority. He was sort
21 of our main person on evaluating those kind of questions.

22 We also had Merritt Beaver as a subject matter expert on
23 that for the front end for all three of the bidders that came
24 through, so they all had to answer those basic questions of the
25 baseline security. The -- everything we had under HB 316, we

1 had to procure a system that was EAC-certified. So the EAC
2 looked at all of these things and have baselines across those.

3 Now, the security, front and foremost for them, not
4 necessarily. It is also accessibility, usability, those kind
5 of things.

6 **Q.** I'm basically looking at what happens when it gets
7 implemented not --

8 **A.** I'm trying to walk through it all. I apologize if I --
9 I'm not trying to be pedantic. I'm just trying to walk through
10 the whole system, how we view it on our side.

11 So then we procured the equipment and started distributing
12 it to counties. The first step to almost all cybersecurity --
13 you can ask most experts -- is physical security. By law and
14 by rule, counties have to account for that physical security.

15 Now, the State backs them up, and actually, in conjunction
16 with the federal government for the last two cycles in a row,
17 we partnered with Department of Homeland Security to go look at
18 the physical access around any of the places where all the
19 State-owned equipment is held in all 159 counties. That is
20 step one.

21 And we worked with DHS to work with the counties because
22 it is the counties' responsibility to keep that safe.
23 Obviously, Coffee County did not do well on that front.

24 Beyond that, the cybersecurity side is we work with
25 Dominion. We have some issues around this in terms of the fact

1 that EAC certification and process takes an extremely long
2 time, but we are also wanting to make sure that our stuff is
3 clean.

4 So we have gone through -- we use Pro V&V, which is our
5 lab. The State pays for them. And they have done post
6 election audits at random locations from random pieces of
7 equipment to do the hash testing and everything.

8 At the last GAVREO conference, we distributed a new
9 third-party tool to allow for the individuals of the counties
10 to run a hash value test to make sure their EMS has the correct
11 hash value as running what we call the golden record. So the
12 State is working with the county to provide them the tools to
13 do those kind of evaluations.

14 The L&A testing is done at the county level, but it is a
15 public process to make sure that --

16 **Q.** Are you talking about the logic and accuracy?

17 **A.** Logic and accuracy.

18 And the State builds the ballots. The counties will sign
19 off on the ballots. So the county is kind of holding the State
20 accountable and the State is holding the county accountable for
21 when we build those ballots, which is the first step for
22 keeping these things secure.

23 So we can't have a bad actor in the State just
24 distributing to the counties and nobody sees how the ballots is
25 actually run. So then the counties have to review those things

1 and sign off on them. Are there mistakes and errors made?
2 Yes, because there's humans involved in the process. And we do
3 our best to mitigate those, again, given the fact I think we
4 have something close to 18,000 ballot styles on a given day --
5 sorry, 18,000 ballot styles on a given election.

6 And in the 2020 election, we had 36,000 ballot styles
7 because of the nature of the presidential preference primary
8 and the regular primary. So that is the thing that holds them
9 accountable, the -- on the L&A side.

10 Then the cybersecurity overall is State-owned equipment
11 but counties play a vital role throughout. So it is sort of
12 a -- I don't want to call it a partnership necessarily because
13 the legal authority to protect the equipment I believe lies
14 with the county. I'm not exactly positive how all of that
15 works. I just know that we kind of work together as a team.

16 We do the training on this. We provide the two-factor
17 authentication to get into our voter registration system. It
18 is not just voting machines. It is the entire ecosystem around
19 that.

20 We have to make sure that there are APIs where we exchange
21 information with the driver's license bureau comes in properly,
22 the death records coming in, and data management on that. That
23 is a State responsibility. When we push things out into the
24 cellular-based Poll Pad system, we have the voter registration
25 system which goes to another thing called E-Polls which then

1 runs the Poll Pads statewide.

2 And one of the advantages -- we chose to make an
3 investment to move to an updated Poll Pad system now because
4 one of the big risks that we can have is people getting the
5 wrong ballots. That is one of the big issues around
6 hand-marked paper, and even around the old BMD system because
7 you checked in on the voter registration system and then you
8 had to go to a separate device to encode the card.

9 Now you check in on the Poll Pad, and it encodes directly.
10 So the chance of a person picking the wrong ballot style and
11 disenfranchising someone from the bottom part of their ballot
12 is taken away. We can track that through log files all the way
13 through.

14 That was very advantageous in some municipal elections we
15 just had that were decided by one vote, and there were some
16 people who were concerned they were giving the wrong ballot to
17 people. We were able to verify that every person who voted got
18 the correct ballot.

19 So that is part of cybersecurity. The machines themselves
20 we train up the State -- unlike in most parts of the United
21 States, we pay for the seals. The State supplies those seals
22 to the counties. We train them on how to use them. We have
23 updated the chain of custody forms.

24 **Q.** All right. This is all helpful in stating it, but I think
25 that my question really ultimately is, is there somebody -- who

1 is that somebody in the State who -- in your office or in some
2 other one that is responsible for oversight of security in the
3 election system to the extent that it is the State's
4 responsibility?

5 **A.** Again, from my point of view, most of this lies in the
6 county level. For the system itself, we have a contract with
7 Dominion. We oversee the contract. But the State -- the
8 Secretary of State's office is consistently making investments
9 trying to make it better.

10 Is there some individual human being who says, this is
11 your sole position --

12 **Q.** Or an office?

13 **A.** I don't -- I can't say for certain on that one. I mean,
14 our office does more than anybody else does, specifically
15 focusing on that up and down the chain, so --

16 **Q.** Our office meaning?

17 **A.** The Secretary of State's office.

18 **Q.** As a whole?

19 **A.** As a whole.

20 And I would say the Elections Division and we -- I have
21 had a budget ask in right now trying to get more cybersecurity
22 people in that -- to pay for, and the Governor's budget, I
23 think, got me one Salesforce person which would oversee the
24 voter registration side. I'm trying to build out with the
25 Secretary's help, and hopefully the Governor and legislators'

1 help, more individuals to do this right now. But we have right
2 now -- we have systems people, we have Michael, who knows
3 this -- Michael Barnes who knows this -- these up and down
4 better than most, and they build the ballots. That is the
5 entry level section for how you have to deal with security. We
6 have the counties who hold it.

7 **Q.** So I guess the thing is, I have missed -- I mean, it is
8 just kind of a fundamental question at this point, is that I'm
9 advised that in the last piece of testimony that the State
10 looks to Dominion to be responsible for the security; is --

11 **A.** I mean, it depends on how you ask the question, ma'am.
12 For the security of the equipment themselves, that would be the
13 county function; for understanding the threat environment and
14 making updates to software, we don't make updates to software.
15 The vendor would make updates to software. The contracts calls
16 for them to do those things. And we had begun the process of
17 rolling out 5-1-3, which would have addressed many of these
18 items, but we couldn't do that in that period of time.

19 5-1-7, we did a pilot on. We're moving as quickly as
20 reality allows us to in many ways in a responsible way, because
21 even in the 5-1-7 test, there were issues we have not been able
22 to explain through engineering yet. EMS went out, three of the
23 county ICCs didn't function properly, and that was in five
24 counties on the small number of elections.

25 So we have to be responsible if we're going to make those

1 upgrades to understand, how does this system work? Right now,
2 5.5 works. We had good elections run through it. We have been
3 viewed as one of the best states in the country running
4 elections. Bipartisan Policy Center says we're tied for number
5 one with Colorado.

6 So we have to live in that actual environment, dealing
7 with the fact that we don't connect to the internet. I mean,
8 as an example, in Florida, all their scanners are connected to
9 the internet, and they view that as a safe risk level. We
10 don't do that. So we know that out of the gate, one of the
11 things we had in our RFP was the -- our voting machines
12 themselves, which is defined under the EAC as those things that
13 create ballots, tabulate ballots, and count ballots and allow
14 for audit of ballots. That is your voting system. And that
15 would be the BMDs, the scanners, and the EMS. The Poll Pads
16 are separate from that verification.

17 So it is a blended -- it is a blended responsibility under
18 the law and under reality.

19 THE COURT: All right. Do you have any questions in
20 light of mine?

21 MR. CROSS: Yeah. A couple of things. I do just
22 want to make sure we're not waiving an objection because there
23 was a lot in that very long answer to what seemed like a pretty
24 simple question from the Court about security.

25 So I would just move to strike the response after he

1 said the vendor would make updates to software, contracts call
2 them for them to do those things, and then went into 5-1-3,
3 5-1-7, Florida.

4 So we believe that is not relevant, hasn't been the
5 subject of discovery, and we would move to strike everything
6 after that to preserve our objections.

7 MR. BELINFANTE: We would object to the striking, and
8 as the business of government goes on daily, I don't think we
9 can hamstring them from testifying about what is happening
10 today in real ground, and he is providing a full explanation to
11 the question.

12 THE COURT: Could you get nearer the microphone.
13 Thank you.

14 MR. BELINFANTE: What --

15 THE COURT: I understood the first part of your
16 response, but I didn't -- I could not hear the other.

17 MR. BELINFANTE: Yeah. No. I'm saying in terms of
18 the specific objections, I do think it was responsive in
19 explaining from the witness' perspective the multilevel that
20 goes into security.

21 In terms of things that were not produced during
22 discovery, discovery ended as to everything but Coffee County
23 effectively last year, and I don't think it is fair for the
24 State to be judged on what it was doing in some cases a year or
25 two ago when we're talking about current threats now. The

1 State does move on, and these things have to be able to be
2 provided for them to use as a fact-finder.

3 THE COURT: Well, I'm going to allow the testimony.
4 I think some of it was not relevant or responsive, but I'm not
5 going to just cut the sentence and that sentence, but --
6 because the question really was, what is the Secretary of
7 State's office in particular doing? Who is in charge of
8 overseeing cybersecurity?

9 And we got into the relationship with the counties
10 and many other things, and -- of which a substantial number
11 were not relevant, though I understood why from the witness'
12 perspective it described the entire system as a whole and that
13 there is a connection between the counties and the Secretary of
14 State's office.

15 But since, in fact, the Secretary of State's office
16 is the defendant in this case that -- I'm laser-focused on
17 that, understanding that there may be others involved and
18 clearly are. That is what the challenge is of delivering in
19 such a spread-out system and -- but so is the history of this,
20 who is responsible for what? Who is on first is still an issue
21 in this case. And how is it relayed?

22 And it sort of goes back to -- you know, you-all had
23 what has been a little -- I don't think that the report done by
24 Fortalice was particularly -- that I previously ruled on after
25 the -- wouldn't have to be disclosed based on attorney-client

1 privilege. And this was the one done in November 27, 2019,
2 and -- but referenced in the litigation later.

3 And attorney-client privilege was asserted, and I
4 mean, this is just -- to the extent that the report alerted the
5 Secretary of State's office of particular risks, it might be
6 relevant. And before, I sort of said, well, since there was a
7 legitimate declaration on the part of Mr. Germany, that as
8 to -- this was -- the purpose of the Fortalice report was
9 internal, basically. Not internal to the department, but to
10 use for outside counsel for defense, that it could properly
11 assert that.

12 The problem I'm -- the thing I'm worrying about is
13 that the more I have heard and think that the evidence is a
14 little bit confusing as to what was done -- the sequence of
15 what was done in terms of risk assessment and how to act on it,
16 the more relevant this report, even as thin as it may be, might
17 be greater.

18 So I'm not going to rule on that, but, you know, I
19 will -- if after today -- because it is 20 after 5:00, or if
20 after we are through with the testimony the plaintiff wants to
21 at some point make an argument for me to reconsider, I would
22 listen to it on the grounds of whether there's substantial --
23 at this point a substantial need for it and substantial and/or
24 some equivalent. So that is under Rule 26(3)(A)(ii) that they
25 would have to show that the party had substantial need for the

1 materials to prepare its case and cannot waive undue -- so
2 whether that is really all the factors have been satisfied, but
3 I'm not going to rule on that.

4 And it is not -- this is not like it is a -- at this
5 juncture -- and what I was going to say, it is not like this is
6 a big find, frankly. But to the extent it is relevant and you
7 haven't been able -- and it is -- the record has now become
8 kind of foggy about what people knew about risks and how they
9 acted upon it and whether -- and who was responsible for
10 checking on things, I'll let you make any argument you want.

11 I appreciate the witness', though, perspective of how
12 he believes that they are addressing all the security concerns
13 that you have raised. All right.

14 MR. CROSS: Your Honor, there were two quick things
15 my team just reminded me in my effort to cut stuff, if I could
16 do two quick things.

17 THE COURT: All right.

18 RECROSS-EXAMINATION

19 BY MR. CROSS:

20 Q. Mr. Sterling, if you just flip to Tab 21 in the binder
21 real quick.

22 A. Yes, sir.

23 Q. And you can flip through it, but just tell me, do you
24 recognize this as a copy of Dr. Halderman's report prepared on
25 July 1, 2021, with the assistance of Dr. Drew Springall?

1 **A.** Yes.

2 **Q.** Do you recognize this report you reviewed before your
3 October deposition, except this one has some redactions in it
4 would be the difference?

5 **A.** I don't remember the Secure the Vote stuff being in the
6 back, but on the front part of it, it does look like the
7 report, yes. That would be the logic and accuracy procedures.
8 I don't recall that being part of the report that I reviewed.

9 MR. CROSS: Your Honor, we move to introduce
10 Exhibit 425.

11 MR. BELINFANTE: Your Honor, we object on the grounds
12 it is hearsay. Dr. Halderman, as I understand it, will be here
13 to testify Thursday. He can do this. There is no reason for
14 Mr. Sterling to do it, and it doesn't alleviate the hearsay
15 problem.

16 MR. CROSS: Your Honor, the report is not offered for
17 the truth. Mr. Belinfante is exactly right. Dr. Halderman
18 will be here to testify. Why we want to offer it is because it
19 was available to the State in July of 2021; identifies
20 vulnerabilities. We need it in the record to show what they
21 were on notice of.

22 True or not, they were on notice of what was said
23 there, and that is an important part of the security -- what we
24 would argue shows a lack of an indifference towards security,
25 is how I would put it.

1 THE COURT: Well, it is admitted for that purpose.
2 And I trust without any doubt that you're going to verify it,
3 that it is not hearsay.

4 MR. CROSS: Thank you, Your Honor.

5 | BY MR. CROSS:

6 | Q. Last thing, Mr. Sterling.

7 Do you recall in August of 2021 you were at the Sandy
8 Springs Perimeter Chamber of Commerce and you got asked a
9 question about Dr. Halderman's report?

10 **A.** From State Representative Roberts, yes.

11 Q. And your reaction was to say that Dr. Halderman's report
12 was, in your words, and I quote, a load of crap?

13 **A.** Correct.

14 Q. And in August of 2021, you had never read his report;
15 right, sir?

A. That is correct.

17 MR. CROSS: No further questions at this time.

18 THE WITNESS: Your Honor, since we're changing
19 counsel real quick, can I run to the restroom?

THE COURT: Yes, you can.

21 If anyone else needs to go, go now or forever hold
22 your peace until 5:30.

23 (A brief break was taken at 4:40 PM.)

24 MR. CROSS: Your Honor, we have some logistics
25 questions when you have a moment.

1 THE COURT: Yes.

2 MR. CROSS: I think our thought was that the
3 Coalition -- well, let me ask you this.

4 Does Your Honor have flexibility to go a little bit
5 later today? And the reason we ask is we were thinking the
6 Coalition could get their examination done today of
7 Mr. Sterling. And then since Mr. Persinger is here, we could
8 turn to that and try to knock that out briefly and get all that
9 done today. But it may take us a little past 5:30.

10 **(There was a brief pause in the proceedings.)**

11 THE COURT: I can't imagine Mr. Persinger is going to
12 be long.

13 MR. CROSS: That's what I thought. I think it's
14 going to be short.

15 THE COURT: So if you can end it -- I mean, we have
16 a -- we'll give it our best try without driving the most
17 valuable member of our team crazy.

18 MR. TYSON: Your Honor, just so we're clear,
19 Mr. Mashburn [sic] has been here all day pursuant to the
20 subpoena waiting for that. That is also why we would like to
21 not have him drive all the way back up to North Georgia and
22 then all the way back.

23 THE COURT: That's fine.

24 MR. TYSON: I'm sorry. What did I say? I'm sorry.
25 Mr. Persinger. I'm sorry.

1 THE COURT: I figured that is what you meant.

2 MR. TYSON: Mashburn has been here for the third time
3 this afternoon as well, but he has now left.

4 THE COURT: Good. Well, there's not going to be that
5 much traffic today, given how it started.

6 MR. OLES: Just for the record, I'm going to have a
7 few questions for Mr. Sterling.

8 THE COURT: All right.

CROSS-EXAMINATION

10 BY MR. MCGUIRE:

11 Q. Good afternoon, Mr. Sterling. I'm Robert McGuire. I
12 represent the Coalition for Good Governance. I think we've met
13 once by Zoom on deposition.

14 | A. I think it was Zoom, yes, sir.

15 Q. Briefly, yes.

16 So I wanted to pick up where Mr. Cross left off on just a
17 couple of things and then turn to what I wanted to ask.

18 First of all, you mentioned Northumberland.

19 Did you mean Northampton, Pennsylvania?

A. Yes, I did. I'm sorry.

21 Q. And you also, I think, mentioned Senate Bill 222 was a law
22 that adopted audits or changed audits?

23 **A.** I could have been wrong on the number, but it was passed
24 in the '23 cycle.

25 Q. Is it possible that was Senate Bill 129?

1 **A.** It is possible. That is likely, actually. Now, since
2 you're telling me that, I'm making the assumption that you have
3 looked at it.

4 **Q.** You wouldn't be surprised if I told you Senate Bill 222
5 doesn't have the word audits in it?

6 **A.** No, I wouldn't.

7 **Q.** Now, you mentioned in that connection with Senate Bill,
8 let's say, 129, you mentioned that that law provides now for an
9 audit in every federal election and every statewide election.

10 **A.** I corrected myself, I thought, in realtime. In a federal
11 cycle, it would be a federal race done, and any statewide,
12 there would be like -- as in the PPP, there will be one because
13 it is a federal race. Now, if it is a Senate election, there
14 will be one statewide race, that kind of thing.

15 **Q.** And so just to clarify, there is only one contest on the
16 ballot that is going to be audited in each of those elections?

17 **A.** Yes, sir.

18 **Q.** So it is not the whole ballot?

19 **A.** No, sir. And as I stated before, I would like to see more
20 audits done on smaller races down on a variable rate. We've
21 argued for that internally for the last three legislatures.

22 **Q.** You also said -- you know, I'm just going to reconcile
23 this.

24 You said at the beginning of your testimony with
25 Mr. Cross, you said that ballot-on-demand printers are prone to

1 human error unlike the system we have now?

2 **A.** Correct.

3 **Q.** But then at the end of the testimony, you said the biggest
4 problem we have is human error on the front end.

5 **A.** Yes.

6 **Q.** So human error is a problem with BMDs one way or the
7 other; right?

8 **A.** No, sir. And in the context that I was explaining that
9 in, is in an early vote environment, you are much more prone to
10 human error on giving a ballot to an individual as they are
11 standing there in front of you to vote. You may have a ballot
12 that looks similar, and especially in a place like Fulton where
13 there are thousands of them, or a ballot code that would be
14 doing from the ballot-on-demand printer for that purpose. And
15 the current configuration with the Poll Pads now, as I was
16 explaining before, you're checked in on the same device that
17 encodes your card and in the record we know --

18 THE COURT: Go slow, slow, slow.

19 THE WITNESS: We know 100 percent that you got the
20 correct ballot barring a redistricting error by somebody, but
21 we have used -- we are using GEO coding tools to avoid that, or
22 just a typo of a county clerk somewhere before it gets to that
23 point.

24 But it is much less likely to get the wrong ballot in
25 early voting under our current configuration of the system so

1 that they are fully enfranchised from the ballot versus a
2 ballot-on-demand system.

3 BY MR. MCGUIRE:

4 **Q.** So you are just talking about early voting?

5 **A.** Yes, because on election day, you have to be in your
6 polling location to get that, so they only have those ballots
7 available.

8 **Q.** So you're not testifying that BMDs get rid of the problem
9 of human error?

10 **A.** Well, there is one other thing -- let me recharacterize
11 this. With the -- you still -- in a polling location, you
12 could have multiple ballot styles. Take Rabun County for
13 instance. They have a single polling location for everybody,
14 so you could still have that problem.

15 With the current configuration of using the Poll Pad to
16 encode the card as you are checked in, that does eliminate
17 human error barring somebody having redistricted improperly,
18 you know, a year or two or ten years before.

19 **Q.** So let me ask another thing.

20 You talked a little bit about -- with Mr. Cross about
21 errors that would occur during -- during an ongoing election
22 and how those would be fixed or spotted.

23 Do you recall testifying about pulling a BMD out if it is
24 not functioning right?

25 **A.** Yes, sir.

1 **Q.** And I think you said there were no -- there was no written
2 policy on what level of problem would cause you to start
3 pulling BMDs or to recommend not running the BMD election on
4 BMDs; correct?

5 **A.** As I understand it from our guidance to counties, if there
6 is a problem with a BMD and they can't make it seem to function
7 properly, they are to remove it. It is just easier to do that
8 than try to, for lack of a better word, futz around with it to
9 get it going; right? So it is easier to remove the one out of
10 commission.

11 **Q.** Are there instructions to poll workers as to what the
12 threshold level is of problems before they take action like
13 that?

14 **A.** I believe it is basically poll managers' best judgment if
15 there is an issue to remove, but there may be. I'm not
16 positive.

17 **Q.** And what would keep, like, bad actors, people who have
18 malicious intent from just coming in and claiming that the BMDs
19 are flipping votes and causing them to be taken out of service
20 for that reason?

21 **A.** Nothing.

22 **Q.** So you're COO of the Secretary of State's office; correct?

23 **A.** Yes, sir.

24 **Q.** And CFO?

25 **A.** Yes, sir.

1 **Q.** And director of licensing?

2 **A.** Yes, sir.

3 **Q.** You said that there was a flat leadership structure in the
4 office?

5 **A.** Yes, sir.

6 **Q.** You said that the way decisions are made is you would come
7 to a consensus?

8 **A.** Generally speaking, yes.

9 **Q.** And the Secretary then makes the decision?

10 **A.** He is in on the discussions. So very rarely is there a
11 time when there is any level of real disagreement that I can
12 recall. I know there has been, but I couldn't speak to
13 specifically what they were.

14 **Q.** When it comes to election issues, who is in that consensus
15 group?

16 **A.** Generally, the general counsel, myself, the deputy, and
17 the Secretary. For specific issues, we would bring in our
18 deputy director over CES and the director of elections.

19 **Q.** So when it came to choosing the current Dominion voting
20 system that Georgia uses, is that the way that system was
21 selected, through that consensus process?

22 **A.** No, sir.

23 **Q.** How did that decision get made?

24 **A.** HB 316 was passed and -- well, it passed the House and the
25 Senate in the same version sometime, I believe, in March of

1 2019. During the same period of time from January 14th up to
2 about that date, our office was working to put together an RFP
3 process in conjunction with the Department of Administrative
4 Services following the Georgia procurement law. In that, we
5 set a 25 percent basis of points on cost and 75 percent basis
6 on technicals. There was a varied team put together of experts
7 in different fields, large county administrators, small county
8 administrators, people from the -- a person from the Department
9 of Behavioral Disabilities -- I can't ever remember the full
10 acronym for them.

11 I'm trying to think. Several people, the CIO for GTA.
12 Let's see. A local judge. I'm trying to think -- I can't
13 remember the exact number of the team, but that is the way the
14 Georgia procurement law does it. You have to have a team that
15 evaluates them and does technicals, and they score the written
16 responses, but we also had three demonstrations by the active
17 bidders, and it was done through a scoring system based on
18 that.

19 And in the initial round of procurement, Dominion was
20 ahead overall slightly behind ES&S, who had been the incumbent
21 provider by a few points. But they were much more expensive.
22 And I'm going to guesstimate around the differences in cost.
23 It was something 122 million to 98 million. It was on that
24 scale. That is not the exact number. I couldn't tell you
25 exactly that.

1 So then it was decided that we had two bidders that had
2 met the obligations to go to a best and final offer.

3 Smartmatic was nowhere near. They're terrible at technicals,
4 and their prices were well-above anything on that front.

5 So Ryan Germany and I went to negotiate with the teams
6 from both Dominion and ES&S. And at that point, technicals
7 cannot change. The technicals are -- that number is set. They
8 can't change those. So we basically told them both, sharpen
9 your pencils, the other side knows the basics of where you are,
10 you know where you are. So basically, we told Dominion, yes,
11 you are better on price right now, but ES&S knows that, and
12 they're better on technicals, so you better get your cost down.

13 And we went to ES&S and said, yes, you are better on
14 technicals, but your price is too high. You better get your
15 price down.

16 And at the end, Dominion lowered their price, ES&S lowered
17 their price, so on the points based on the Georgia procurement
18 law following the DOS regulations, Dominion was declared the
19 winner of the bid and there was no -- one of the best parts of
20 that was there was no bid protest following that, which was
21 surprising to us.

22 **Q.** Now, HB 316 required Georgia to use BMDs; right?

23 **A.** Correct.

24 **Q.** But it didn't require Georgia to use BMDs with QR codes?

25 **A.** Correct.

1 **Q.** That was a choice that the Secretary's office made when it
2 looked at the bids?

3 **A.** All three bidders had barcodes or QR codes. No bidders
4 had other technology.

5 **Q.** Now, not all BMD systems use QR codes; right?

6 **A.** Correct.

7 **Q.** So there's, for example, Hart, which doesn't use QR codes?

8 **A.** But they did not submit a bid.

9 **Q.** Isn't it true that their bid was just like a couple of
10 minutes late after the deadline?

11 **A.** No, sir. It was -- they started loading it, I think, at
12 10:30 the previous night, even though we had pre-bid conference
13 saying please start yourself a couple of weeks early because
14 our system is slow. They knew the rules. They called about
15 two or three hours after the bid had closed to ask if it had
16 made it in. Not even all parts of it had.

17 So they didn't respond. They -- we can't reopen a bid.
18 They didn't follow the procurement law, so therefore they were
19 not considered a responsive bidder.

20 **Q.** You permitted the other bidders to change their bids after
21 they were submitted, though?

22 **A.** No, sir.

23 **Q.** Well, weren't you just talking about changing the price,
24 altering those kinds of terms?

25 **A.** Okay. That is how the system is -- the law is written.

1 You can -- the technicals are the technicals, and they have
2 deadlines and timelines they have to meet. If you don't meet
3 those deadlines and timelines, you're not considered a
4 responsive bidder. And there is -- I don't know if the video
5 still exists on YouTube, but our procurement officer basically
6 said, if you were late, you will be -- not responsive, you will
7 not be reviewed. And she said something about four or five
8 different things.

9 So Hart didn't meet that; therefore, they were not an
10 eligible bidder, so therefore they were not reviewed. So the
11 only options available under the law were three different
12 systems, all of which used either a QR code or a barcode.

13 **Q.** Was that something that the Secretary's office was unhappy
14 about?

15 **A.** We always want to have the most qualified bidders
16 available.

17 **Q.** Is that -- were you dissatisfied?

18 **A.** I would have preferred to have as many bidders available
19 who had any technology. I personally didn't care.

20 **Q.** Would you have preferred to have a bidder that did not
21 have a QR code as part of their system?

22 **A.** As I just stated, I didn't care. Because of the time, I
23 wanted to have as many bidders as possible.

24 **Q.** Now, and election director Chris Harvey, was he heavily
25 involved in that process of selecting the winning system?

1 **A.** Again, in our office, we intentionally didn't want to have
2 the review committee be SOS staff heavy. We had Kevin -- I'm
3 totally blanking on his last name right now -- who was our
4 deputy. He was the deputy director of elections and deputy
5 general counsel. Kevin -- I keep thinking Robertson. That's
6 not right. It is Kevin. He is at the post office now. I'm
7 blanking.

8 But he was one of them. Jordan Fuchs was one. And
9 Merritt Beaver and I were in the room, but only as subject
10 matter experts. We could not speak on anything unless it was
11 specific to that. So I was there for the business stuff, he
12 was there for some of the IT technicals.

13 But it was those -- I believe it was seven -- I could be
14 wrong -- it was seven people who made that decision based on
15 following Georgia procurement law.

16 **Q.** And it wouldn't surprise you to know that Chris Harvey
17 testified last week that he didn't know why this particular
18 system had been chosen?

19 **A.** No, it wouldn't because that wasn't really a role he had
20 in the system. He knows we followed Georgia procurement law, I
21 assume.

22 MR. MCGUIRE: Your Honor, may I approach, please?

23 THE COURT: Yes.

24 BY MR. MCGUIRE:

25 **Q.** Mr. Sterling, I'm showing you what has been marked as

1 Coalition Plaintiffs' Exhibit 60.

2 Do you recognize that?

3 **A.** Yes, sir.

4 **Q.** That is your Tweet about Northampton, Pennsylvania; right?

5 **A.** Yes, sir.

6 MR. MCGUIRE: Your Honor, I move to admit

7 Plaintiffs' -- Coalition Plaintiffs' Exhibit 60.

8 MR. BELINFANTE: No objection.

9 THE COURT: It is admitted.

10 BY MR. MCGUIRE:

11 **Q.** Now, Mr. Sterling, your Tweet here says, issues that
12 affected ES&S machines in Northampton County, Pennsylvania, was
13 a human error in programming, should have been caught in two
14 processes prior to election. It was identified, and courts
15 have allowed a process to count all votes correctly.

16 Everyone's vote will count.

17 Did I read that right?

18 **A.** Yes, sir.

19 **Q.** Now, ES&S BMDs pretty much operate like Georgia's BMDs;
20 right?

21 **A.** I honestly couldn't tell you.

22 **Q.** They had a screen?

23 **A.** I don't know how ES&S machines operate. I can remember
24 the version of this one. There is a very fundamental
25 difference in their's is the fact, if I remember correctly,

1 they take a ballot, they give you a piece of paper with a notch
2 on the side of it, you insert it into their -- I can't remember
3 the name of the particular piece of equipment. You make your
4 selections, it spits it back out, you look at it, and I believe
5 you put it back into the same machine.

6 So that was a fundamental difference. We would go to a
7 different scanner altogether not contained in the same section.

8 **Q.** But in principle, it prints out a ballot based on your
9 touch screen selections; right?

10 **A.** Yes, sir.

11 **Q.** And then that ballot gets scanned and counted?

12 **A.** After you review it -- as I understand it, it spits it
13 back out to you, you review it, then you place it back in, yes.

14 **Q.** And this Northampton system was that the runner-up to the
15 Georgia system that you were just talking about, the ES&S?

16 **A.** I know ES&S was the runner-up. Whether it is the same BMD
17 system or not, I could not say.

18 **Q.** Now, in Northampton, the problem with the ES&S system was
19 that the BMD printout showed the wrong votes being selected on
20 two judicial retention races; right?

21 **A.** Again, it depends. Because of the way they had set up the
22 ballot -- and this is what goes back to their L&A testing being
23 insufficient to what they were doing -- they essentially
24 inverted both individual judges. So if you chose yes for both
25 judges, it didn't matter. If you chose no for both judges, it

1 didn't matter. But if you said yes for one judge and no for
2 the other judge, that is when it became apparent.

3 So they likely did one or over one, two over two, instead
4 of doing -- when I say this, you are touching the screen to get
5 variability during L&A. That is what you're supposed to be
6 able to do. They obviously didn't do that. They just did yes,
7 yes, no, no, and therefore it wasn't detectable because the
8 outcomes were the same. Only when you had a yes and a no did
9 that -- did it become apparent that that was happening. This
10 should have been caught at the ballot build and in the L&A
11 section.

12 **Q.** So it is definitely an error, a human programming error?

13 **A.** Correct.

14 **Q.** That error was detected because when people got their
15 ballot summary, the printout, the text version, they saw if
16 they voted differently that the votes were flipped?

17 **A.** Correct.

18 **Q.** And so anyone observing and paying attention would have
19 seen that?

20 **A.** Correct.

21 **Q.** On the QR code on those ballots, was it flipped?

22 **A.** Yes -- or no. This is what I don't know. There are two
23 different things you're programming. You program the QR work
24 flow, and you program the work flow for the ballot. They
25 are -- there are two different ways of doing this, and the way

1 that ES&S does it, if I understand correctly -- I'm not going
2 to speculate on this because somebody walked me through this,
3 and it is somehow different from our system, but I don't want
4 to give specifics on it because I'm not a deeply technical
5 person on this. I wanted to understand it because an attack on
6 election equipment anywhere in America is an attack on election
7 equipment everywhere in America. So that is why I did that
8 Tweet, to begin with.

9 **Q.** But the bottom line, though, is that isn't it true the QR
10 code had the right votes and the text summary in some cases had
11 the wrong votes?

12 **A.** I don't know.

13 **Q.** Okay.

14 **A.** The main thing -- I'm sorry.

15 I was pointing out that the courts intervened to allow the
16 votes to be counted properly, and the election outcome was
17 correct. That was my main point about this.

18 **Q.** And isn't it true that the way they dealt with that was
19 they instructed voters just to ignore if the votes were
20 switched on the text summary?

21 **A.** I believe that was correct. And also, I was frustrated
22 when learning about this, that they had discovered this days or
23 weeks beforehand that -- and that was their fix was just to
24 tell people to ignore that on election day.

25 **Q.** So this a real world example of a barcode and a text

1 summary not always matching; right?

2 **A.** Because of human error, yes.

3 **Q.** And this error was caught because voters noticed?

4 **A.** Yes.

5 **Q.** There was no hacking? It was just a mistake in
6 programming?

7 **A.** A human error in programming, yes.

8 **Q.** Now, you said earlier you were familiar with Professor
9 Halderman's work on the BMDs here?

10 **A.** Yes. Just from reading his report, yes.

11 **Q.** Excuse me?

12 **A.** Just from reading his report, yes.

13 **Q.** And you are familiar from reading his report that he was
14 able to develop a hack in which he was able to alter the QR
15 code from what the voter chose but print out on the text
16 summary something that matched what the voter chose?

17 **A.** Yes.

18 **Q.** Now, in that situation, the voters wouldn't know that the
19 QR code was wrong; right?

20 **A.** Correct.

21 **Q.** Have you given thought to how things might play out here
22 in Georgia if something like the Northampton situation or the
23 Halderman QR code hack were to happen in one of the upcoming
24 elections in 2024?

25 **A.** We have a real world example of what happened in DeKalb

1 County.

2 **Q.** Tell me about that.

3 **A.** There was a human programming error, but we were able to
4 use the paper to get to the final outcome being correct. Now,
5 an audit would potentially catch a switch between a QR code and
6 the readable section of it, which is why I think we should have
7 more audits. But it depends on the level we get to. You may
8 have to have a revote, potentially. You would have to go
9 through the certification questions around that. We've thought
10 through what would happen in such a situation.

11 But at the same time, you would have to think through if
12 somebody attacked a scanner and did the same thing because then
13 your ballots wouldn't match the tape that comes out, they
14 wouldn't match the EMS. All of these are true regardless of
15 the systems that you have. There could be things that can
16 happen and can be done to alter the outcomes of elections, but
17 all of them are, from our point of view, highly difficult to
18 actually achieve in an undetectable way, which I said, we have
19 protective, detective, and then recovery. And the biggest
20 recovery of all is, as we saw where there was redirecting
21 errors in North Georgia, is they reran the election twice
22 because they did the same thing -- they had the same human
23 redistricting errors twice in the same location.

24 **Q.** So we don't run out of time, I'm just going to ask you
25 questions and ask you to just keep the answers a little

1 shorter. Okay?

2 If you can just focus on just the -- I'll give you a
3 chance to -- I'll ask further questions. But if you can just
4 answer what I'm asking, then I'll give you a chance to explain
5 unless it is not something that I want to pursue. Okay?

6 So let's say that there is a QR code that doesn't match
7 the text code on the ballot in Georgia.

8 The voters won't catch that; right?

9 **A.** No.

10 **Q.** They can't catch it?

11 **A.** No.

12 **Q.** So the only way that is going to get caught is if that
13 particular contest gets audited; right?

14 **A.** Yes. Of course, if there is a programming error on a
15 hand-marked ballot, they can't catch that either.

16 **Q.** Now, in an audit, what text on a BMD ballot card gets
17 counted?

18 **A.** Whichever contest is being reviewed.

19 **Q.** But -- and I'm sorry, I might have asked that question
20 wrong.

21 In an audit, what part of the BMD ballot card is getting
22 counted?

23 **A.** The human readable section.

24 **Q.** So it is different than the part that the machines count
25 on the initial count?

1 **A.** Of course. That is the intent.

2 Q. And given that we're only talking about auditing one
3 contest per ballot, right, doesn't it seem unlikely that a QR
4 code problem will be caught at all?

A. Again, it depends.

6 Q. And if the audit does run and it looks at the contest
7 where there is a QR code problem and it catches it, there is no
8 legal consequence to that, is there?

9 MR. BELINFANTE: Objection. Calls for legal
10 conclusion.

11 MR. MCGUIRE: Your Honor, I think he's got to be able
12 to talk about his planning for this stuff to happen in Georgia,
13 and this is one of the contingencies that they obviously would
14 have considered.

15 THE COURT: I think he can testify about that. I
16 mean, while it is not 100 percent sure what the legal
17 consequence would be, he certainly can state an opinion based
18 on his experience.

19 THE WITNESS: The legal consequence would be, under
20 the law, you can't -- any losing candidate can demand an
21 election challenge, which if it rose to that level, they could
22 attempt to do to show that enough ballots were potentially
23 affected by that, so you would go to the courts using that.

24 BY MR. MCGUIRE:

25 Q. So they would have to bring a contest?

1 **A.** Yes.

2 **Q.** And contests have super tight time frames, legally
3 speaking; right?

4 **A.** It has to be done post certification, but I'm not sure of
5 the timeline after that because, as an example in the
6 North Georgia case, they simply just continued to do re-votes
7 until they got an election where the data was correct.

8 **Q.** There is not usually discovery in election contests, is
9 there?

10 **A.** I don't have any idea.

11 **Q.** And if there was a re-count, let's say, the re-count is
12 going to count what part of the BMD ballot?

13 **A.** Under the law, it would be the QR code.

14 **Q.** So the re-count would produce the same count as the
15 initial count even if the QR code is wrong?

16 **A.** Again, it depends because 100 percent of our ballots
17 aren't BMD ballots, and invariably, if we have re-counts, there
18 are always slight variations. People lose ballots, things scan
19 differently, adjudication is done differently, hand-marked
20 ballots, so forth and so on.

21 **Q.** Now, you're confident that these are sufficient
22 protections against the possibility of a hack that would have
23 attacked the BMD system?

24 **A.** Well, we have an additional -- there's a few things that
25 we have done based on the CISA requests or advisory.

1 **Q.** Let me just ask you, these are things that are existing in
2 current law today that you're about to tell me?

3 **A.** It doesn't have to be law. We can do things without
4 having to make them legal. We can do them by rule, we can do
5 them by practice. Like, again, we now moved to Read Once -- I
6 mean, Write Once, Read Many for election projects. That was
7 one of the things that CISA asked us to do. We are moving to
8 parallel monitoring which will be able to catch --

9 **Q.** I'm going to stop there if I can, please, because that
10 is not in rule or regulation today, is it?

11 **A.** It is -- okay. As I'm pointing out, it doesn't have to be
12 in a rule or regulation for the Secretary's office to do it, so
13 we are doing it. We are doing parallel monitoring in the
14 upcoming elections which would be able to identify if there
15 was -- if the BMD was not producing ballots as done based on
16 the test decks that we put out there.

17 **Q.** So if you have a BMD that is not working in the middle of
18 a live election and you pull it because it is not working, what
19 happens to all of the voters I think -- let's say this happens
20 in the middle of the day.

21 What happens to all of the voters who have already cast
22 their ballots on that machine?

23 **A.** Well, you said not working. You mean, they are not
24 working, like, at all, or they are flipping votes, or what is
25 your question?

1 **Q.** If you decide there is something wrong with it and it has
2 to be taken out of service, what happens to all of the voters
3 who have already voted on that machine that day?

4 **A.** Okay. Again, you're supposing something here. We take
5 machines out all the time without there being flipping of
6 votes. That is not an unheard thing. If it is printing slow,
7 it is flashing, it is going offline, we take it out of service,
8 period.

9 Now, if there is one that does that, that recovery from
10 that would have to be -- we would probably have to review those
11 ballots, but I don't know the exact rule or law that would
12 cover that.

13 **Q.** So -- but you would agree there is a difference between
14 taking a machine out of service because it might have a glitch
15 that causes it to not function properly in terms of producing a
16 ballot, for example, on one hand and a machine that you have to
17 take out of service because it might be doing the Northampton
18 thing where it is flipping votes on the other hand?

19 **A.** It would be, but, of course, I have not seen that in
20 Georgia in a real world environment before.

21 **Q.** So if you did have to take a BMD out of service and you
22 thought that it was because it had been hacked or
23 misprogrammed, how would you know reliably what the voter did
24 on the touch screen with respect to any of the ballots that had
25 already been printed from that BMD?

1 **A.** I believe there is a log file that would do that, but it
2 doesn't have a cast vote record, so I couldn't know for
3 certain. The cast vote record is kept on the scanner itself.

4 **Q.** The log file doesn't keep track of what voter touches what
5 spot on the screen?

6 **A.** I don't recall if my question -- answer. I do not know.
7 I cannot recall right now.

8 **Q.** Do you recall appearing on the Atlanta Journal
9 Constitution's Politically Georgia podcast that aired two
10 Fridays ago?

11 **A.** Yes.

12 **Q.** Do you recall saying on that podcast -- I'm going to quote
13 you -- think of the ballot-marking device as a really big
14 expensive pen?

15 Do you remember saying that?

16 **A.** Yes.

17 **Q.** Doesn't that analogy ignore that with a pen you are the
18 one doing the writing?

19 **A.** No, sir.

20 In that same context, if a hand-marked ballot is done and
21 the program is running, the voter would then again not have any
22 way of knowing that because they don't know how the scanner --

23 THE COURT: Wait a second. I can't understand
24 anything you are saying at the moment. Just go slower.

25 So you started saying, no, sir, in that same context,

1 and then we're off to --

2 THE WITNESS: Same context, a voter cannot read a
3 hand-marked paper ballot to know how the scanner is going to
4 read it. There's two ways that a ballot is read, by the human
5 eye and then by the computer that is programmed to do that. So
6 if the programming is done backward or incorrectly, it would
7 be -- it would not -- the voter does not know for certain how
8 that is done.

9 BY MR. MCGUIRE:

10 Q. That is counting the vote; right?

11 A. Or potentially casting the vote. Human beings are
12 invariably terrible at doing some of those things. Like, A BMD
13 ballot is more reviewable by some academic standards than a
14 hand-marked paper ballot is because there are two very
15 different functions going on, but I don't want to get too in
16 the weeds on that right now.

17 Q. Reviewing a ballot is just about verifying that what is
18 recorded is what the voter actually intended to vote; right?

19 A. By what the voter does, yes.

20 Q. So recording a ballot -- recording a vote is different
21 than counting a vote?

22 A. Correct.

23 Q. So you would agree with me that with paper ballots, when
24 the voter is using a pen to fill in an oval, the voter is
25 recording their own vote?

1 **A.** As long as they don't put a stray mark somewhere, yes.

2 **Q.** Do you recall saying on the podcast that the reason we do
3 it that way -- meaning the reason Georgia uses BMDs -- is,
4 quote, we avoid undervotes, we avoid overvotes, and those are
5 the real big problem with hand-marked paper ballots, end quote?

6 Do you recall saying that?

7 **A.** Yes.

8 **Q.** Now undervotes can be deliberate; right?

9 **A.** Yes.

10 **Q.** I might not want to vote for any of the jokers running for
11 dog catcher, for example?

12 **A.** Yes, sir.

13 **Q.** If I'm a Georgia voter, I might want to skip races?

14 **A.** Yes, sir.

15 **Q.** And I'm entitled to do that?

16 **A.** Yes, sir.

17 **Q.** So it is fair to say, isn't it, that the State has no
18 interest in making me vote on contests I don't want to cast a
19 vote in?

20 **A.** I think you're misinterpreting my statement.

21 **Q.** It is fair to say that the State doesn't have any interest
22 in doing that; right?

23 **A.** Actually, with the way you phrase your question, no, I
24 think the State, by using a BMD, is giving a voter guidance to
25 make sure they are making that decision, not simply

1 accidentally making the decision to skip an election.

2 **Q.** It is prompting them?

3 **A.** Prompting them, yes, sir.

4 **Q.** Reminding them, you left this blank, is that a mistake?

5 **A.** Correct.

6 **Q.** But if I do want to leave it blank, the State has no
7 interest in making me vote that contest?

8 **A.** No, sir.

9 **Q.** As far as overvotes, your concern about avoiding those
10 doesn't apply to hand-marked paper ballots that are marked and
11 voted in person at a polling place, does it?

12 **A.** Yes, sir, it does.

13 **Q.** Well, a voter who completes a hand-marked paper ballot in
14 a polling place won't be able to cast an overvoted ballot into
15 the scanner, will they?

16 **A.** They can choose to.

17 **Q.** Well, the scanner will kick the ballot back out, though;
18 right?

19 **A.** But then they can say, go ahead and scan it.

20 **Q.** So isn't that the kind of prompt that the BMD gave you
21 when it was an undervote?

22 **A.** Here is the issue again in the real world. And this is
23 going to be anecdotal. I have talked to people from Florida
24 and Virginia who basically say it spits it back out to people
25 and the general reaction is you can go back.

1 MR. CROSS: Your Honor, I'm sorry. This is all
2 hearsay. It is also not responsive to the question that was
3 asked.

4 THE COURT: Well, it is hearsay. I mean, there is
5 probably a way of eliciting it or allowing the witness to
6 explain his answer without getting into all the hearsay.

7 So why don't you ask the question again and focus
8 the -- refocus the witness on providing non-hearsay
9 information.

10 BY MR. MCGUIRE:

11 **Q.** So when a voter in a polling place casting a hand-marked
12 paper ballot goes to scan it, it gets kicked out; right?

13 **A.** It can, yes.

14 **Q.** And that gives the voter a chance to look over and correct
15 the overvote if they want to?

16 **A.** If they so choose.

17 **Q.** Okay. So any concern that hand-marked paper ballots allow
18 overvotes, meaning overvotes not subject to correction by the
19 voter, only applies to absentee ballots; right?

20 **A.** Again, an issue is human beings generally, I'm done, I
21 want to get out of here. And they will often just go ahead and
22 do the overvote and not caring because they don't want to go
23 back and be embarrassed. They don't have time. They have
24 completed their process. And --

25 **Q.** And that same motivation might cause a voter not to even

1 verify their ballot on a BMD; right?

2 **A.** Not necessarily. Again, two different styles of voting
3 have two different behavioral patterns to them. Neither one is
4 perfect or best. I just feel like our system is better for
5 protecting against those problems that existed previously in
6 Georgia.

7 **Q.** You also told the Politically Georgia podcast in that same
8 appearance that BMDs were more secure than hand-marked paper
9 ballots because it is difficult to change things on BMD
10 ballots. You said, quote, if there's ever a place where you
11 could have potential voter fraud, it is on hand-marked paper
12 ballots because it is very easy to go in and overvote it, end
13 quote.

14 Do you recall saying that?

15 **A.** Yes.

16 **Q.** Now, when you talk about people going in and overvoting
17 someone else's ballot, are you talking about that happening
18 before the ballot gets to the election office?

19 **A.** It could happen before it gets to the election office,
20 when it gets to the election office. If somebody has access to
21 those ballots, either legally or illegally, they could quickly
22 and easily with no threshold of knowledge be able to overvote
23 certain contests on those ballots. It is much easier to do.

24 **Q.** That concern only applies to absentee hand-marked paper
25 ballots; right?

1 **A.** No, sir.

2 **Q.** Well, how do you get between the voter who has just filled
3 it out and is walking over to the scanner to put it in and
4 change their ballot?

5 **A.** Because if it goes to a contest after the fact or when it
6 is held afterwards, the initial count may be correct, but if
7 somebody wants to, again, cause chaos or problems, they could
8 decide to slightly hit those ballots. We wouldn't know which
9 ones were there. We could lose the ballot images, potentially,
10 and -- but yes, the biggest threat is always going to be
11 hand-marked absentee ballots. In person, the risk is lower but
12 still exists.

13 **Q.** I mean, that same risk would exist for BMD ballots which
14 could be destroyed, for example, after they are counted; right?

15 **A.** We still have the ballot images.

16 The other thing that could happen is if you use an
17 emergency bin, those would then be scanned centrally and not
18 necessarily scanned on-site. These are, again, all different
19 levels of risk at different times.

20 **Q.** And in all of these circumstances, you are really talking
21 about fraud by election workers?

22 **A.** It would, generally speaking, have to be an inside actor,
23 which is always your highest level of risk because it is hard
24 to detect until after the fact.

25 **Q.** And if you are talking about fraud by election workers,

1 BMD-printed ballots aren't any safer from mischief in the back
2 office than paper ballots are?

3 **A.** The physical ballots themselves are, yes, because there is
4 no real way to alter a BMD ballot or produce them without
5 having some kind of record or trail that exists somewhere on
6 some BMD.

7 **Q.** You told Mr. Cross -- I think your quote was, chaos begets
8 people mistrusting the outcome of elections; right?

9 **A.** Yes, sir.

10 **Q.** So it is a vital state interest that people should trust
11 the outcome of their elections; right?

12 **A.** Yes, sir.

13 **Q.** Mr. Sterling, the Secretary's office has called some of
14 the plaintiffs, if not all of them, election deniers.

15 I think you confirmed that earlier; right?

16 **A.** Or like election deniers or election -- (unintelligible).
17 I'm not exactly sure of all of the different terms that have
18 been used.

19 **Q.** If a BMD ballot was to be over-marked by somebody after it
20 had been cast, would that spoil it?

21 **A.** I don't know how you over-mark a BMD ballot.

22 **Q.** Well, if you fill in an oval on the BMD card after it has
23 been tabulated, it is sitting in there, you go in and fill in
24 the race, I think that was your concern about absentee ballots;
25 right?

1 **A.** Sir, I am now lost because there are not ovals on a BMD
2 ballot.

3 **Q.** Yeah, fair enough. Fair enough. Sorry. That is a good
4 point.

5 Could they go and spoil the BMD ballot by making marks on
6 the QR code?

7 **A.** If such a thing happened, that would be pretty noticeable
8 and we would probably do a duplication of that in the election
9 office from the written human readable portion.

10 **Q.** How are you going to identify the particular ballot? Is
11 that stored in the log file, some kind of thing that connects
12 the paper to what is happening on the machine?

13 **A.** No. Your example was they have a BMD ballot, a physical
14 ballot. They have then done something to the QR code. It
15 wouldn't scan. The human could look at that and say someone
16 has gotten a Sharpie on this to block out some of these things.
17 If we can see the human readable section of it, we will
18 duplicate that ballot.

19 It is just the same thing as if a ballot -- an absentee
20 ballot was put through an opening device and was cut in half,
21 we would duplicate that ballot normally on BMD in most counties
22 and then keep the original record of that tied back to that
23 ballot to be counted properly.

24 **Q.** Let me jump back just to election denier point, and then
25 I'll wrap up.

1 What is an election denier?

2 **A.** In general, a person who denies the outcome of an election
3 based not necessarily on fact but on theory and not evidence.

4 **Q.** Now, Jordan Fuchs works in your office?

5 **A.** Jordan Fuchs is the deputy secretary, yes.

6 **Q.** Isn't it true that she called your co-defendant, Edward
7 Lindsey, an election denier at some time in the last week?

8 **A.** I do not believe that she was referring necessarily to Ed
9 Lindsey, but some of the things being done for that because of
10 the move to investigate the Secretary's office in an
11 unconstitutional manner.

12 **Q.** Isn't it true that election deniers is really just a slur
13 that you use to de-legitimize concerns about the voting system?

14 **A.** No, sir.

15 MR. McGUIRE: I have no further questions.

16 THE COURT: How much time do you need?

17 MR. OLES: Hopefully, just ten minutes, Judge, if
18 that.

19 THE COURT: Where is Mr. Persinger?

20 MR. TYSON: Mr. Persinger is waiting just outside,
21 Your Honor.

22 THE COURT: Do you have a preference as to -- I mean,
23 I don't know that the court reporter is going to be able to do
24 both of these people ten minutes, plus whatever the
25 five minutes is. So my thought was if Mr. Persinger is not

1 going to be here -- need to be here tomorrow, maybe we could
2 have him now and we'll see where we are at.

3 But I'm open to --

4 MR. TYSON: Your Honor, given that Mr. Persinger has
5 been here all day pursuant to the subpoena -- I know
6 Mr. Sterling has some responsibilities tomorrow as well, but I
7 think he's at least closer physically than Mr. Persinger is.

8 THE COURT: Very well. It is not very long that is
9 left for you.

10 MR. BELINFANTE: Yeah, the only thing I would ask
11 Your Honor -- and I haven't talked to the client about it, is I
12 know that the Secretary has a budget presentation tomorrow; is
13 that right?

14 THE WITNESS: Yes, sir.

15 MR. BELINFANTE: You need to be there for that?

16 THE WITNESS: That would be best.

17 MR. BELINFANTE: So we could coordinate the time, it
18 may be that he doesn't come on if it is first, but we can work
19 that out.

20 THE COURT: All right. If he would just hold up,
21 though, for a minute so that we can get Mr. Persinger in here,
22 because if it takes two minutes, we could possibly just finish.

23 MR. BELINFANTE: Yeah, absolutely.

24 THE COURT: Because I assume you're not going to want
25 to examine the witness yourselves.

1 MR. BELINFANTE: We're going to reserve our
2 examination for Mr. Sterling.

3 THE COURT: Why don't we just hold -- why don't you
4 step back. Don't talk about your testimony again.

5 We want to get Mr. Persinger in here. We'll find out
6 if it is a two-minute thing or not. All right.

7 THE WITNESS: Just go?

8 THE COURT: Thank you.

9 MR. TYSON: Your Honor, given the topic of
10 Mr. Persinger's testimony, are we going to need to have this in
11 camera?

12 THE COURT: Yes.

13 Ladies and gentlemen, I'm terribly sorry. There is
14 not much left. But if you want to be here, stay outside and
15 come on back if we are going to go. I'm not sure what is going
16 to happen. You'll know.

17 If it is going to take more than five or six minutes,
18 I'm just going to simply stop the proceedings and we'll resume
19 tomorrow so you can -- I guess my suggestion is, if you're
20 interested in staying through the -- Mr. Sterling's testimony,
21 wait for five minutes and you'll see where we're at, even if
22 we're not -- you'll know if we've gone longer than
23 five minutes.

24 MR. OLES: Judge, if it is possible, I would prefer
25 to wait until the morning if possible.

1 THE COURT: We'll see what is happening. All right?
2 That is fine.

3 Ladies and gentlemen, then anyone who is not counsel
4 or on counsel's team, would you go ahead and excuse us and
5 just -- you can sit outside if you want to stick around.

6 What about the people on your side of the room?

7 MR. TYSON: They are not with us, Your Honor, in the
8 audience.

9 THE COURT: Folks, you can come back if we are
10 finished with this witness early; otherwise, we're going to
11 resume tomorrow at 9:30 in the morning.

12 Anyone else? I mean, I just don't know everybody.

13 MR. TYSON: I think that is Mr. Favorito's wife.
14 They are not with the State.

15 THE COURT: All right. Very good.

16 MR. CROSS: They are not with anyone. That is the
17 problem.

18 THE COURT: How about the individual over here?

19 MR. RUSSO: This is all our team --

20 THE COURT: That's fine --

21 MR. RUSSO: -- other than, I think, Josh.

22 THE COURT: No reason that I would know.

23 MR. RUSSO: That's fine, Your Honor.

24 MR. TYSON: Have Mr. Persinger come to the stand,
25 Your Honor?

1 THE COURT: Yes.

2 (There was a brief pause in the proceedings.)

3 THE COURT: Harry, would you swear in the witness?

4 (Witness sworn)

5 COURTROOM DEPUTY CLERK: Please have a seat. State
6 your name and spell your complete name, please.

7 THE WITNESS: Jim Persinger, P-E-R-S-I-N-G-E-R.

8 MR. TYSON: Your Honor, just to confirm, this portion
9 of the testimony is going to be sealed; is that correct?

10 THE COURT: That's right.

11 MR. TYSON: Thank you.

12 MR. CROSS: Your Honor, I did want to flag. Mr. Oles
13 has left, and we do have an objection to him being here. So I
14 don't know if he is planning to come back in, but we would ask
15 that he not be in for this.

16 THE COURT: He has not signed the --

17 MR. CROSS: Correct.

18 THE COURT: All right. Since he has not signed the
19 confidentiality warning, I think that is correct.

20 But does he understand that that is going to
21 happen?

22 MR. CROSS: Well, he walked out, so I'm not sure. I
23 guess if he comes back in, we can address it.

24 MR. TYSON: Your Honor, I just wanted to flag under
25 the review protocol only Mr. Russo and I have signed the

1 protocol, so I just wanted to flag the other members of our
2 team have not. So if you would like for them to step out as
3 well.

4 THE COURT: They need to step out too.

5 **(The public proceedings were thereby adjourned**
6 **at 5:38 PM.)**

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1 C E R T I F I C A T E
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3 UNITED STATES OF AMERICA
4

5 NORTHERN DISTRICT OF GEORGIA
6

7 I, SHANNON R. WELCH, RMR, CRR, Official Court Reporter of
8 the United States District Court, for the Northern District of
9 Georgia, Atlanta Division, do hereby certify that the foregoing
10 264 pages constitute a true transcript of proceedings had
11 before the said Court, held in the City of Atlanta, Georgia, in
the matter therein stated.

12 In testimony whereof, I hereunto set my hand on this, the
13 16th day of January, 2024.

14
15 *Shannon R. Welch*
16

17 SHANNON R. WELCH, RMR, CRR
OFFICIAL COURT REPORTER
18 UNITED STATES DISTRICT COURT
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